

UNITED STATES OF AMERICA

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FEDERAL COMMUNICATIONS COMMISSION

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FIELD HEARING

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BROADCAST OWNERSHIP EN BANC

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RICHMOND, VIRGINIA

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CHAIRMAN POWELL PRESIDING

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P-R-O-C-E-E-D-I-N-G-S

10:00 a.m.

SECRETARY DORTCH: Today's hearing will focus on the FCC's Broadcast Ownership rules and will give the public an opportunity to voice its opinions about the Commission's examination to determine whether any of the rules are no longer in the public interest as a result of competition. This periodic examination is required by the Communications Act.

Following are the procedures for today's en banc hearing. We will utilize a time-keeping machine located in front of Chairman Powell to maintain time limits on each presentation. Panelists will each have a total of five minutes to make their individual presentations. The green light will stay lit for the first three minutes of your remarks. When the yellow light signals, you have one additional minute to sum up your presentation and close your remarks. The red light signals the end of your allotted time. Please conclude your remarks at that time.

Following the morning session, a lunch break will be held from 12:10 p.m. to 1:10 p.m.

Information concerning nearby eateries is available on the table to the right outside of the

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1 ballroom doors.

2 The Convention Center prohibits the
3 bringing in of food and drink from outside vendors.

4 The afternoon session of the hearing will
5 begin promptly at 1:10 p.m. Sign language
6 interpreters are available to assist people with
7 disabilities. If you need an interpreter, please
8 indicate this now to the FCC interpreter who is
9 standing with her hand raised.

10 The transcript of this hearing will be
11 made a part of the record and will be available on the
12 FCC website, www.fcc.gov approximately 14 days from
13 today.

14 Mr. Chairman and Commissioners, the
15 hearing will now begin.

16 Mr. K. Dane Snowden, Chief of the
17 Commission's Consumer and Governmental Affairs will
18 serve as our MC.

19 Thank you.

20 MR. SNOWDEN: Good morning. On behalf of
21 the Commission I would like to welcome everyone to the
22 FCC's Broadcast Ownership en banc hearing. In
23 addition, I would like to thank and extend the
24 Commission's thanks and appreciation to all of the
25 invited panelists and the members of the public for

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1 joining us from the Richmond area and from across the
2 country.

3 As many of you know, the Commission is in
4 the midst of its most comprehensive review
5 of the FCC's broadcast ownership rules, some of which
6 date back to the early 1940s. Every two years the
7 Commission is required by Congress to examine its
8 broadcast ownership rules and determine whether the
9 rules are necessary in the public interest as
10 the result of competition. If a rule cannot be
11 justified, it must be modified or eliminated.

12 Today's en banc hearing is another example
13 of how the Commission is interacting with the public
14 on this very important subject. In addition to
15 participating in the public forum sponsored by
16 Columbia University, we have received more than 18,000
17 comments on this subject, the vast majority of which
18 are from individual citizens.

19 Our goal today is to hear from the public
20 on the important issue of Broadcast Ownership
21 currently before the Commission. It should be noted
22 that the Commission's ultimate task in fulfilling its
23 public interest responsibility is to promote
24 diversity, localism and competition. In addition, we
25 must craft rules that are sustainable in the eyes of

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1 the courts.

2 We are very interested in learning how the
3 three prongs of diversity, localism and competition
4 are promoted under our current broadcast ownership
5 regime. As the FCC designs rules, we strive to
6 establish a framework which accounts for the modern
7 day marketplace. All of this stated, it is important
8 to note that, by the end of this proceeding, the FCC
9 intends to have broadcast ownership rules that reflect
10 the current marketplace and are legally sustainable.

11 Before we begin with our moderator and the
12 panels, I would first like to turn the floor over to
13 the Chairman and Commissioners for their opening
14 remarks.

15 Chairman Powell?

16 CHAIRMAN POWELL: Thank you, Dane, and
17 welcome everyone to this Federal Communications
18 Commission field hearing. I'll get right to an
19 important question. It seems like every time we have
20 one of these it's snowing. I don't know what that
21 means, but we'll fight through it. But I want to let
22 everyone who has traveled to know that we are going to
23 keep a close eye on the weather and do what we need to
24 do in terms of adjusting schedules, if that becomes a
25 problem, just so that you know.

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1 Actually this snow only heightens my
2 gratitude for the sacrifices our panelists have made
3 to be here today. It is commendable that they agreed
4 to take time out of their busy schedules to prepare
5 for and participate in today's hearing. Given the
6 weather conditions, their efforts are deeply
7 appreciated.

8 I would also like to thank Dane Snowden
9 and his tireless team for making this broadcast
10 ownership hearing happen. Until you've actually tried
11 to set up a field hearing like this, you may not
12 appreciate how much work is truly involved. They did
13 a fabulous job and I appreciate their efforts.

14 I am enormously pleased so many people
15 have expressed an interest in the Commission's review
16 of broadcast ownership regulations. The number of
17 comments we have received is staggering, multiple
18 thousands from the general public alone. It is
19 gratifying to witness first hand the unparalleled
20 opportunities technology now provides the American
21 public to participate in the democratic process. This
22 record combined with the forum we hold today, will
23 create one of the most exhaustive records in recent
24 FCC history, one deserving of a proceeding of this
25 magnitude.

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1 I am particularly pleased to see that the
2 staff arranged for the leadoff presentation to address
3 "legal issues" which are often perceived as pesky to
4 some, but essential to good policy making. There are
5 issues in media policy far sexier than the legal
6 framework, but none is more critical if you wish to
7 understand how we will make ownership policy
8 decisions.

9 For better or worse, the FCC has hundreds
10 of rules and regulations currently on its books. Each
11 day, when my colleagues and I come to work in the
12 morning, we have plenty to do. Thankfully, one thing
13 we don't have to do is re-justify every rule in the
14 book. Each existing rule is generally presumed to be
15 as valid today as it was yesterday.

16 Sadly, the broadcast ownership rules are
17 fundamentally different pursuant to Congress' design.
18 Every two years without fail, the Commission is
19 required by statute to review the broadcast ownership
20 rules. And when it does, it is legally required to
21 presume each rule is no longer needed unless we find
22 otherwise according to the courts. Unless we can re-
23 justify each broadcast ownership rule, in short, and
24 under current market conditions, the rule goes away.

25 Under this tough review standard of

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1 review, courts have become far more skeptical of FCC
2 rationales for imposing limits on broadcast ownership.
3 Five times in the past two years we have defended our
4 ownership rules in court. And sadly, five times we
5 have lost. 0-5 is not an enviable record.

6 The common theme of the courts' criticism
7 is that we have failed to justify our rules in light
8 of today's media environment. What the courts have
9 told us, in no uncertain terms, is that the biennial
10 standard is a rigorous test. Either we produce
11 evidence that the rule is still necessary, or we must
12 eliminate it and if we do not, they will do it for us.

13 If the Commission does the same half-
14 hearted effort it did in the last Biennial Review, I
15 guarantee you that every one of the broadcast rules
16 will be swept away in a court of law. Let's see if we
17 can put that Genie back in the bottle.

18 Yet we all agree that some broadcast
19 ownership limits are indeed critical if we are to
20 maintain a robust marketplace of ideas. The public
21 interest is all about promoting diversity, localism,
22 and competition. We can achieve these goals -- and
23 the courts will agree with us -- if we do it
24 correctly.

25 The right way is building rules that

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1 reflect today's media market. We do that by gathering
2 evidence on the critical questions: How do Americans
3 use the media? Where do they get their news from?
4 What industry structure best promotes diverse and
5 innovative media content?

6 The FCC staff kicked off that effort by
7 conducting a dozen studies on the workings of the
8 media. Whatever those studies suggest for ownership
9 policy, they make an important procedural point --
10 that this rulemaking will be driven by evidence, not
11 just intuition or personal preference. This agency
12 tried personal preference in the last biennial review
13 and got hammered for it.

14 That's why we have proceeded methodically
15 this time around. The court cases gave us clear
16 guidance on how to do the biennial review correctly.
17 We took that guidance to heart, we conducted a large
18 number of studies, and then we began the biennial. We
19 had a long comment period so interested parties could
20 formulate their own views and provide us with them.
21 And several public hearings, including today's, are
22 being held around the nation.

23 I hope today's hearing will build on the
24 enormous record already before us. We have
25 specifically set aside time for members of the public

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1 to air their views and I very much look forward to
2 hearing them.

3 Finally, let me once again thank the
4 panelists for agreeing to join us today to share their
5 views as well as my colleagues for being here. The
6 speakers with us today are an enormously talented and
7 accomplished group, and I very much look forward to
8 their statements and the subsequent dialogue.

9 Commissioner Abernathy?

10 COMMISSIONER ABERNATHY: Thank you, Mr.
11 Chairman.

12 Good morning, everyone. It's a pleasure
13 to be here. First, I want to thank Dane Snowden and
14 everyone involved in organizing today's event. I also
15 want to thank everyone that is taking part in today's
16 hearing whether you are on a panel or you're coming
17 here as part of the audience, you are making an
18 invaluable contribution to the discussion on broadcast
19 ownership. You braved the elements to get here, as
20 the Chairman said. So thank you very much.

21 I don't have to tell any of you about the
22 important role that the media plays in our education,
23 our entertainment, and in our civic discourse. For
24 this very reason, the FCC has continually focused on
25 the importance of promoting localism, diversity and

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1 competition when we're crafting media ownership rules.

2 I am committed to furthering these long-standing
3 goals by re-examining our rules to ensure that our
4 regulations advance and do not undermine our policy
5 goals.

6 It is also important to note that Congress
7 instructed us to review our broadcast ownership rules
8 to determine if they are still necessary in the public
9 interest in light of the changes in competition. In
10 addition to this Congressional mandate, however, the
11 courts have also weighed in and not very kindly, and
12 they've weighed in by overturning some of our media
13 ownership rules. And as the Chairman mentioned our
14 win/loss record in the courts over the past two years
15 has been rather pathetic. The courts have also made
16 clear that we must justify the retention of any of our
17 rules, or they will be eliminated. We have been
18 faulted for failing to take into consideration the
19 plethora of voices that are now available and for
20 failing to take a consistent approach across all of
21 the ownership rules. These court decisions
22 necessarily provide the context for any future
23 decisions that the FCC makes.

24 No one can dispute that the marketplace
25 has changed significantly since the adoption of many

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1 of our ownership rules. We now have a greater number
2 of choices, as well as increased consolidation. It
3 was not that long ago that we only had three networks
4 and some independent stations. Now, in addition to
5 ABC, CBS and NBC, we have UPN, WB and PaxNet available
6 to us over-the-air. Eighty-five percent of homes,
7 moreover, have access to hundreds of cable programming
8 networks. I know that some have expressed concern,
9 however, that 90 percent of the top 50 cable channels
10 are owned by the television networks and the cable
11 providers. These kinds of cross-ownership issues are
12 very important and we need to look at them. But I
13 also want to look beyond the popularity of a program
14 and ask whether we have a diverse array of choices
15 that can reach small niche audiences that may be
16 ignored by the mainstream, more popular programming.
17 So, when discussing choices I will look not just at
18 the top 50 cable networks, but also at the other
19 national and regional networks.

20 I also recognize that there has been
21 increased consolidation in the media industry; this is
22 not surprising because companies seek the benefits of
23 scale and scope unless curtailed by regulators or the
24 courts. My job is to look at the effects of
25 consolidation and to ask:

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1 How has consolidation affected the amount
2 of diverse programming people are receiving?

3 How has it affected the availability of
4 local news and public affairs programming in small
5 markets?

6 How has it affected competition in the
7 marketplace?

8 Restrictions that may have been needed in
9 the past to ensure competition and diversity may
10 actually make it more difficult for programmers and
11 station owners to provide compelling quality
12 programming in light of the significant competition
13 that over-the-air broadcasters are facing from other
14 sources.

15 In seeking answers to these and other
16 questions, we need to be wary of the unintended
17 consequences of changing our rules, as well as of the
18 unintended consequences of maintaining our rules. I
19 want to ensure that if we eliminate or modify any of
20 our current rules, we don't lose vibrant voices and
21 diverse sources from our civic discourse. I also
22 need to know what effect our current rules are having
23 on the survival of the broadcast industry as they
24 position themselves to compete with cable, DBS and
25 other services. And while we talk about the 85

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1 percent of people that have access to cable and
2 satellite, we can't forget about the approximately 15
3 percent of the American public that only receive
4 broadcast services. I think it's essential that free
5 over-the-air services remain competitive and viable
6 and continue to provide programming alternatives.
7 What I don't want is for the competitive environment
8 to drive the migration of quality programming to cable
9 and away from broadcasting.

10 No doubt, these are important decisions
11 and we must carefully consider the regulatory options
12 that are available. But do not worry that we are
13 rushing to judgment. First, government is simply
14 incapable of rushing.

15 (Laughter.)

16 Second, we are responding to the fact that
17 a number of rules that have been remanded or vacated
18 by the courts, leaving the American people, the
19 industry and the FCC in limbo. Inaction by the FCC
20 only prolongs the uncertainty to the detriment of the
21 public and the marketplace.

22 And third, without question, this is the
23 most robust, detailed evidentiary record that I have
24 seen in my 20 years of practicing telecommunications
25 law.

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1 As Dane stated, we sought comment on 12
2 studies and we have received over 3000 comments, over
3 2900 of which are from individual citizens. In
4 addition, there have been over 10,000 e-mails from the
5 public, and a number of public hearings have been held
6 and are being held again in the future. I am taking a
7 hard look at this information as are I know all of my
8 colleagues. But don't forget, the statute and the
9 courts require the Commission to act on a timely
10 basis, and it is our obligation and duty to respect
11 and adhere to that schedule. We cannot let fear
12 paralyze us. There will be no crystal ball available
13 to us six months or a year from now. And I believe
14 our job, why we were nominated by the President and
15 confirmed by the Senate, is to make these tough
16 decisions and not simply hope that they'll go away.
17 And while I know that not everyone will agree with us
18 when we make these decisions, we will be carrying out
19 our responsibilities.

20 So thank you for allowing me to take a few
21 minutes to share with you the questions that I think
22 need to be addressed. I look forward to listening and
23 learning from all of you, the insight and the
24 viewpoint of the public and the industry are, as
25 always, an essential part of the FCC's regulatory

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1 process. Thank you for your time and your commitment
2 to working with us to make well informed and well
3 reasoned decisions that will benefit all of us.

4 MR. SNOWDEN: Thank you. Commissioner
5 Copps?

6 COMMISSIONER COPPS: Good morning and
7 welcome. Thank you all for braving the weather to
8 take part in this important event. Those of you from
9 Washington have heard me say that, for me, no issue
10 pending before the Federal Communications Commission
11 is so important as the decision on whether to
12 eliminate or significantly change our media
13 concentration protections. I say that because what we
14 decide will have a formative influence on how our
15 media will look for many, many years to come. I
16 believe that fundamental values and democratic virtues
17 are at stake here -- things like localism, diversity,
18 competition and maintaining the multiplicity of voices
19 and choices that undergird our marketplace of ideas
20 and that nourish American democracy. And also at
21 stake is the quality and type of the entertainment
22 that we and our children watch and hear. So this is
23 really important work that we are about today. And I
24 think that despite Mother Nature and other challenges,
25 we have top quality participation today. So I'm ready

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1 for us to roll up our sleeves and go to work.

2 I think that we should have two goals
3 today. Proceeding on an assumption that some find
4 hard to believe, all expertise on these issues does
5 not reside within the I-495 Beltway. Our record needs
6 much more breadth than the capital can provide. So
7 our first goal in coming to Richmond is to talk with
8 members of this community and this state and to tap
9 local expertise to help us make the right decisions
10 and have a record of factual depth and granularity
11 that the courts will accept in reviewing what we do
12 and that the American people will accept. Secondly, I
13 hope we can raise the awareness in Richmond that
14 something important is going on at the FCC, something
15 that each person here in the city and in the state has
16 a stake in, something that every consumer, every
17 citizen, should know about.

18 I am frankly concerned about consolidation
19 in the media, and particularly concerned that we are
20 on the verge of dramatically altering our nation's
21 media landscape without the kind of broad, national
22 debate and analysis that these issues so clearly
23 merit.

24 Why am I concerned? I'm concerned because
25 I don't believe that we yet know the potential

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1 implications of our actions. We do have some
2 experience to learn from -- and that is what happened
3 to radio after Congress and the Commission changed the
4 rules of the game seven years ago. Many media
5 observers believe that the loosening of ownership caps
6 and limits that took place then created real problems
7 in radio. We'll hear more about that on today's
8 panels. Arguably, consolidation also created some
9 economies and some efficiencies that allowed broadcast
10 media companies to operate more profitably and may
11 even have kept some stations from going dark and
12 depriving communities of service. We need to take
13 that into consideration. But I think most people
14 would admit that the consolidation went far beyond
15 what anyone could have foreseen in 1996.
16 Conglomerates now own dozens, even hundreds -- and in
17 one case, more than a thousand -- stations all across
18 the country. More and more of their programming seems
19 to originate hundreds of miles removed from listeners
20 and their communities. And we know this, there are 34
21 percent fewer radio station owners in February 2003,
22 than there were before these protections were
23 eliminated. The majority of radio markets are now
24 oligopolies. And all this in only seven short years!

25 It raises serious questions. Media

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1 watchers like the Media Access Project, which is here
2 today, Consumers Union, and Professor Robert McChesney
3 argue that this concentration has led to far less
4 coverage of news and public interest programming. The
5 Future of Music Coalition in its multi-year study
6 finds a homogenization of music that gets air play and
7 concludes that radio seems to serve now more to
8 advertise the products of vertically integrated
9 conglomerates than to entertain Americans with the
10 best and most original programming.

11 So, should we eliminate, or substantially
12 change, the protections that remain for television,
13 cable, and newspapers? Before we can make that
14 decision, we need to better understand the current
15 media landscape and the implications of eliminating
16 concentration protections. Today we know far too
17 little to make an informed decision. Not only do we
18 not have all the answers, we haven't yet teed up all
19 the questions. Let me list just a few questions the
20 studies don't answer.

21 What is the likely prospective effect on
22 localism, diversity, and independence of TV, cable,
23 radio, and newspapers if we eliminate our protections,
24 especially given our history with radio consolidation?

25 How much news and public affairs

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1 programming was broadcast in the years immediately
2 before and after elimination of FCC radio
3 concentration protections?

4 What effects have recent media mergers,
5 radio consolidation, and TV duopolies had on the
6 personnel and resources devoted to news, public
7 affairs, and public service programming, and on the
8 output of such programming? How about the effect on
9 the creative arts? Will eliminating our rules result
10 in a crisis in any of those areas?

11 Do newspapers and co-owned broadcast
12 stations carry similar viewpoints more frequently than
13 independent newspapers and broadcast stations? The
14 one FCC study is criticized as insufficient.

15 How do consolidation and co-ownership
16 affect the news' and arts' focus on issues important
17 to minorities and to the objective of diversity? And
18 how about children?

19 Is there a relationship between the rising
20 tide of media consolidation on the one hand and the
21 low quality and indecent programming on the other
22 hand?

23 How are advertising and small business
24 affected?

25 The list goes on and on. Today hopefully

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1 we can begin to address some of these questions. We
2 need answers to them before I can feel comfortable
3 about making an informed decision. We need a
4 diversity of input into the Commission on these issues
5 that goes beyond anything we've ever had before. We
6 need to hear from stakeholders of every stripe -- and
7 as far as I'm concerned, anybody that lives in this
8 democracy of ours is a stakeholder in the future of
9 the media.

10 So it's just not business, although
11 business input is essential. We want to hear from
12 consumers, labor, educational, religious, and minority
13 organizations, and Americans who have never heard of
14 the Federal Communications Commission. We can pretend
15 that these folks read the Federal Register and can
16 afford the lawyers to participate fully in our
17 inside-the-beltway decision making. But we'd be
18 kidding ourselves. This decision is too important to
19 make in a business-as-usual way. We need America's
20 buy-in, and we need your help in answering these
21 questions. That is why I have put so much emphasis on
22 outreach to those I call nontraditional stakeholders
23 who have traditionally lacked access to the FCC. That
24 is why I've been pushing so hard for hearings around
25 the country.

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1 Something tells me this hearing will not
2 disappoint me and we'll walk away from here knowing
3 some facts, granular facts that we didn't know before
4 we got here and that we'll hear some perspectives that
5 don't just automatically float into us at the FCC.

6 Lastly, I want to note that all of us here
7 today -- from the Chairman and the FCC, to media
8 advocacy groups, academics, and industry, we are all
9 interested in doing what's best, together, for the
10 American people and the American consumer. I note
11 with sadness this morning that Fred Rogers of Mr.
12 Rogers' Neighborhood died today. Here was a man who
13 really used the media to serve the public interest,
14 and his example would remind us what we're all working
15 for, TV, radio, cable, newspaper and internet, that
16 something that uplifts and informs and serves. We
17 have some extraordinary people who have made a real
18 effort to debate this issue today. That means a lot
19 to me. I know that we're all after the same thing and
20 that we can work together to do the best thing.

21 Thank you, Mr. Chairman, for calling this
22 hearing. Thanks to Dane Snowden and his capable team
23 for putting it together. Thanks to our panelists for
24 taking the time to come here. And to the audience
25 also.

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1 MR. SNOWDEN: Commissioner Martin?

2 COMMISSIONER MARTIN: Good morning and
3 thank you for -- thanks everyone as well for braving
4 the weather to join us at this public hearing. And
5 Dane, I particularly want to thank you and your staff
6 for the incredible job, as you always do, in putting
7 this together for us.

8 I find enormous value in the opportunity
9 to talk to you and actually hear from members of the
10 public, as well as the media industry. Getting your
11 thoughts and insights on the subject our media
12 ownership rules is particularly important to our
13 thorough review.

14 When formulating media ownership rules,
15 three key principles have guided, and will continue to
16 guide, our Agency's decisions: competition, diversity
17 and localism. These core values recognize the
18 tremendous role the media plays in a functioning
19 democracy, where the ability to express diverse
20 viewpoints is essential. Indeed, much of the news,
21 information and entertainment that we receive today
22 are from the media. Thus, any decisions the FCC makes
23 with respect to media ownership will impact our day to
24 day lives, the continued expression of diversity and
25 ultimately our democratic system. Yet, we must

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1 address these issues. Congress has required us to
2 review our broadcast ownership rules every two years
3 to ensure that they are still necessary. And the
4 courts have made clear that this cannot be a cursory
5 review, nor can we base our conclusions on
6 unsubstantiated beliefs.

7 As the Chairman has explained, if we don't
8 adequately justify our rules, the courts may eliminate
9 our ownership rules altogether. In that vein, the
10 Chairman should be commended for conducting this
11 comprehensive review.

12 There's no question that the courts have
13 been evaluating our decisions with increasing
14 scrutiny. Indeed, the D.C. Circuit has struck the
15 last five media ownership rules it has reviewed. The
16 court has repeatedly criticized the Commission for
17 failing to consider the competitive forces present in
18 the modern media marketplace and the new voices that
19 have been introduced since the rules were first
20 enacted.

21 Indeed, the media landscape has changed
22 significantly since the adoption of our current rules.
23 The number of broadcast networks has doubled and we
24 now have numerous nonbroadcast networks. There are
25 230 national cable programming networks and more than

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1 50 premium networks that regularly rival the broadcast
2 networks in audience share. Their success is
3 naturally due to the introduction of widespread
4 popularity of multi-channel video programming
5 services. In fact, today, over 85 percent of
6 households receive their video programming via
7 satellite or cable.

8 In addition, the growth and popularization
9 of the internet has dramatically changed how people
10 receive and distribute information. The internet
11 represents a significant outlet for diverse use, as
12 well as an important source of news and information to
13 consumers.

14 It is with all these changes in mind that
15 we must conduct our review of the ownership rules.
16 Given all of the developments in the media landscape,
17 one rule in particular is in need of review. The rule
18 which prohibits a company from owning a newspaper and
19 a broadcast station in the same market has not been
20 reviewed in almost 30 years. Today, newspapers are
21 the only media entities that are prohibited from
22 owning a broadcast station, even in the largest
23 markets. Today, two broadcast stations are generally
24 permitted to combine in the largest markets and could
25 own up to six radio stations as well. Yet, newspapers

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1 remain prohibited from owning even a single radio
2 station.

3 The Commission has stated several times in
4 the past seven years that this rule might need
5 modifying, but after three notices it has yet to act.
6 At a minimum, I think that so long as a significant
7 number of independent voices remain in the
8 marketplace, we should give broadcast stations and
9 newspapers the same opportunity to combine that two
10 television stations now have in the largest markets.

11 Of course, the introduction of new voices
12 into the marketplace does not necessarily mean that
13 all of our limits need to be relaxed or eliminated.
14 Indeed, I believe that the FCC must be mindful of
15 unintended consequences from any changes to our rules.
16 For example, many people have expressed concern about
17 the increase in consolidation that has occurred in
18 local radio. But some of this consolidation may
19 actually be due to the Commission's rules rather than
20 the numerical limits set by Congress.

21 The problem lies in the FCC's definition
22 of a market and in an obscure counting method for
23 determining how many stations in a market one entity
24 owns. The result of our practice is that the
25 Commission sometimes treats small towns like big

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1 markets. We have raised these issues as well in the
2 current proceeding and we need to take this
3 opportunity to address them here as well.

4 Clearly, with the media marketplace
5 becoming more and more complex, there are no easy
6 answers to the task we confront. The ownership rules
7 are in need of review and in some instances revision.
8 But our guiding principles will remain at the heart of
9 all our decisions.

10 I remain committed to doing everything I
11 can to ensure that the FCC adopts ownership rules that
12 protect and promote competition, diversity and
13 localism in today's medium environment and I'm fully
14 aware of how central the decisions will be and will
15 make to the lives of many of you.

16 Thus, I welcome all of your insights and
17 commend the Chairman for instituting this proceeding
18 and scheduling this hearing. And I look forward to
19 hearing from you, both today and in the months to
20 come.

21 Thank you.

22 MR. SNOWDEN: Thank you. Commissioner
23 Adelstein?

24 COMMISSIONER ADELSTEIN: Thank you, Mr.
25 Chairman and Commissioners. I'd like to thank you for

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1 convening today's hearing. I really appreciate your
2 leadership in pulling this together and I think it's
3 going to be a very illuminating panel we have and
4 thank you to Dane for pulling this together and to all
5 the staff of the Consumer and Governmental Affairs
6 Bureau for doing this. I'd like to thank Commissioner
7 Copps also for his leadership in calling for all of us
8 to get out of D.C. and to get out of the Beltway and
9 to hear from people that are affected by this and that
10 means everybody because everybody in this country is
11 affected by this.

12 And we have an amazing group of panelists
13 today I'm looking forward to hearing from very
14 shortly. I thank them and the audience for braving
15 the elements to get here.

16 As my colleagues have noted, we are about
17 to make some enormous decisions, some of the most
18 important decisions ever made by this Commission. And
19 yesterday, for example, we had a hearing on
20 telecommunications issues at the House Commerce
21 Committee. A lot of the hearing turned out to focus
22 on media ownership. It turned out Members of the
23 House Commerce Committee are deeply concerned about
24 how this Commission takes its role as people who are
25 charged with protecting the public interest and

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1 ensuring that the public interest is served as we are
2 required to do by law in establishing the media
3 ownership rules of this country. Because the media
4 market isn't like other consumer products. It's not
5 like we're dictating the price of candy here. But you
6 could compare it in a sense to candy. Think about the
7 children of this country. I have a new child at home
8 and you don't want them eating sweets all the time and
9 you don't want them watching stuff on television
10 that's like candy. You want them watching the good
11 stuff, things that he's going to learn from, things
12 that are going to help his small mind to grow and to
13 develop. And we need to look at how the rules that we
14 establish affect our children. And we need to look at
15 how it affects all Americans of all ages. The media
16 really dictates the vitality of what the Supreme Court
17 referred to as the "uninhibited marketplace of ideas."

18 So we need to hear from a diverse range of
19 media voices. This is at the very core of our
20 democracy.

21 I'd like to read to you a bit from a
22 Supreme Court decision in the Red Lion case that
23 touches on this issue and really, I think, lays out
24 the role that the Supreme Court sees in law for the
25 Commission. The Supreme Court held, and I quote, "it

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1 is the right of the public to receive suitable access
2 to social, political, aesthetic, moral and other ideas
3 and experiences which is crucial here. That right may
4 not constitutionally be abridged by Congress or by the
5 FCC."

6 So the Supreme Court decision is every bit
7 as pertinent to our discussion of the ownership rules
8 as the D.C. Circuit opinions that have asked the FCC
9 to justify our current rules.

10 We've got to build a solid evidentiary
11 record to support our rules as my colleagues have
12 indicated. But we've also got to bear in mind that
13 the Supreme Court mandate to promote the core public
14 interest values is also our job. We need to promote
15 diversity, localism and competition in our media
16 markets. And our decisions can't possibly rest on
17 just empirical evidence alone. We've got to examine
18 in quantitative data and I commend the Chairman's
19 leadership in conducting these FCC sponsored ownership
20 studies. These studies and the critiques of them, I
21 think, offer us a key part of our current record. But
22 these questions do not lend themselves to purely
23 quantitative answers. We need to hear about your
24 experiences as participants in the media marketplace.
25 You know, government rulemaking inherently involves

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1 making predictive judgments about what's going to
2 happen as a result of actions that we take now. And
3 how can we possibly say that we can come up with any
4 scientific proof about what's going to happen based on
5 some kind of quantitative data? We've got to look at
6 what's happened in the past. We need to look at
7 history. We need to look at the radio market and see
8 if we're satisfied with what happened as a result of
9 taking the cap off entirely as Congress did to the
10 amount of radio stations that people in this country
11 can own.

12 I don't think a lot of people in this
13 country are happy about what they hear on the radio.
14 I know a lot of Members of Congress have expressed
15 concerns directly to us on the Commission.

16 So we need to make predictive judgments
17 that's done in traditional anti-trust analysis as
18 well, but those judgments have to be rooted in a
19 solid, evidentiary record, but let's not pretend that
20 this is science. The questions before us just don't
21 lend themselves to mathematical proofs. We've got to
22 use our judgment and the courts have time and again
23 affirmed the right of this Commission to exercise its
24 judgments in trying to determine what is the public
25 interest which is our legal mandate.

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1 So how do we determine what media
2 ownership rules best promote the public interest?
3 This task is daunting and it's made even more
4 challenging by the short time frame that's been
5 proposed for this proceeding.

6 One panelist in our last hearing observed
7 that the FCC plans to revamp all of its rules in a
8 shorter time frame than an NBA basketball season and I
9 joined the Commission part way into that season. I
10 view this form as another step in our record building
11 efforts and another step getting close to the process
12 of getting ready to make those decisions. The
13 panelists that we have before us are a cross section
14 of some of the many stakeholders in this proceeding.
15 They're journalists, content producers, broadcasters,
16 educators, but even more importantly, they're
17 listeners, viewers and participants in our democracy.
18 You all have a stake in this proceeding and we want to
19 hear your views today.

20 It's been noted that we have over 15,000
21 comments on the record in this proceeding, a huge
22 number by FCC standards, but there's 250 million
23 people in this country and all of them are affected by
24 this. So today is part of an effort and we need to
25 make a lot more efforts just like this to reach out

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1 and get more input on these massive decisions that
2 we're about to make.

3 Like I said, your participation is crucial
4 in FCC decision making. The process depends on it and
5 more importantly the outcome depends on it. There's
6 no way the Commission can fully understand the impact
7 that our decisions are going to have on different
8 constituencies unless we hear from them.

9 If we're to craft media ownership rules
10 that best serve the public interest as we're required
11 to do, we've got to hear from the public and that's
12 why I'm here.

13 I don't know yet what media ownership
14 rules will best serve the public interest, but I know
15 that the FCC must proceed with caution as we
16 reconsider our existing rules. Further media
17 consolidation can't easily be undone. Once the
18 toothpaste is out of the tube, it's going to be
19 difficult, if not impossible to put it back in. So
20 thanks again for joining us and let's get to it.

21 MR. SNOWDEN: Thank you, Mr. Chairman and
22 Commissioners. This morning, we will hear from three
23 panels on the specific themes of diversity,
24 localism and competition. The panels will be
25 moderated by Tom Krattenmaker, who will first

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1 summarize the key broadcast ownership rules and
2 issues.

3 Before I introduce Mr. Krattenmaker, let
4 me briefly describe the two ways we have provided for
5 members of the public to participate directly in
6 today's program. First, while the panelists are
7 speaking, members of the public are invited to write
8 down any questions for the panelists on the index
9 cards located on the tables at the back of the room
10 when you came in. Those cards will be collected
11 during the panel presentations. The questions will be
12 forwarded to the moderator, who will pose them to the
13 appropriate panelists following their opening
14 statements.

15 Second, we have set aside 30 minutes at
16 the end of each panel as a public comment period.
17 Members of the public are invited to use the open
18 microphones that are located in the middle of the room
19 to offer comments regarding the pending rulemaking
20 proceeding. If you are not able to express your
21 comments today, you are welcome to submit them as a
22 part of the record in the pending broadcast ownership
23 rulemaking proceeding. To file your comments
24 electronically, go to www.fcc.gov and follow the
25 instructions for ECFS Express.

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1 Now it is my pleasure today to introduce
2 our program moderator, Mr. Tom Krattenmaker. Tom is
3 Senior Counsel in the Washington office of Mintz
4 Levin, where he focuses on telecommunications
5 transactions and antitrust representation and
6 counseling. Prior to joining Mintz Levin, Tom was
7 Director of Research in the FCC's Office of Plans and
8 Policy under former Chairman William Kennard. In that
9 position, Tom oversaw the Commission's staff review
10 and recommendations to the Commission regarding
11 telephone, cable and satellite industry mergers.
12 Before joining the Commission, Tom served as Special
13 Counsel for Policy and Regulatory Affairs in the
14 Antitrust Division of the Department of Justice.
15 There he oversaw review of several mergers and other
16 transactions in regulated industries. Tom also
17 clerked for Justice John Harlan of the U.S. Supreme
18 Court, and spent several years in academia. He was
19 professor of law and Associate Dean at Georgetown
20 University as well as Dean of the Marshall-Wythe
21 School of Law at the College of William and Mary. He
22 has also taught at the University of Connecticut
23 School of Law and at the University of Natal in South
24 Africa.

25 We are honored and pleased to have Tom

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1 join us today and moderate our panel discussions.

2 MR.KRATTENMAKER: Thank you, Dane. It's a
3 privilege and an honor for me to moderate today's
4 hearings and I'd like to give my sincere thanks for
5 that to each of the Commissioners and to the FCC's
6 Media Bureau for inviting me here today and asking me
7 to moderate this session.

8 I'd like to join with the Commissioners in
9 thanking you for attending and also thanks to the
10 people in Richmond for hosting us. For those of you
11 who have not already guessed it from my accent, this
12 is a bit of a homecoming for me. I am not a Virginian
13 by birth, although I was born in South Jersey, but I
14 spent most of my high school years in Richmond
15 attending both Hermitage and Douglass Freedman High
16 Schools. In fact, the high point of my career in
17 public elective office occurred right here in Richmond
18 in 1956 when I was elected President of the 8th Grade
19 at Hermitage.

20 (Laughter.)

21 As you can tell from Dane's excessively
22 kind introduction, my academic career has been in
23 constant decline since then.

24 It is the opinion of a couple of people
25 here that there might be some members of the audience

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1 who are not so interested in learning about my
2 fascinating life as understanding why we are here and
3 what the ground rules might be, so why don't I get to
4 that.

5 Today's topics, what are we here for? The
6 Commission is in the midst of reviewing, as you've
7 heard from the Commissioners, in one comprehensive
8 proceeding, all of its rules that limit the extent to
9 which owners of radio and television broadcast
10 facilities can control additional outlets or related
11 businesses. There are essentially six of these rules
12 under review. Now remember, Dane told you I spent 30
13 years in legal education, so you pay attention because
14 there is going to be a pop quiz when I finish.

15 Four of these six rules center around
16 local markets. They are first, the local TV station
17 ownership rule. This rule provides that no one may
18 own more than two TV stations in any one market and
19 may own two only under certain conditions concerning
20 the size of the market and the strength of the co-
21 owned stations.

22 There's also a local radio ownership cap.
23 This provides that a firm may own up to eight radio
24 stations in one market, depending on the size of the
25 market which is to be measured by the number of radio

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1 stations in that market.

2 Next we have the local TV-radio cross
3 ownership rule which provides that a firm that owns
4 only one TV station in a local market may own one,
5 four or seven radio stations in that market as well,
6 depending on the size of the local market. In this
7 case that market is measured by taking account of not
8 only the number of radio and TV stations, but also the
9 number of cable systems and newspapers in that market.

10 And the final local rule that's in this
11 proceeding is the broadcast newspaper cross ownership
12 ban, which provides that no one may own both a daily
13 newspaper and either a TV or a radio station in the
14 same market.

15 The other two rules center around national
16 markets. First, there is a limitation on TV network
17 mergers. No merger is permitted between firms that
18 are among the top four television ownership networks,
19 but a top four network may merge with a network
20 outside the top four.

21 In addition, there's a national TV station
22 ownership cap. No company may own a group of
23 television stations that in the aggregate can reach
24 more than 35 percent of U.S. households. There is no
25 corresponding limit on the number of radio stations

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1 that any firm can own nationwide.

2 Okay, got all that? It's quite a
3 mouthful. It's easy for me to say. I practiced it.
4 But actually, it's not all that hard. As a summary
5 overview, just think local and national. In local
6 broadcast markets such as Richmond, there are rules
7 limiting TV plus TV, radio plus radio, radio plus TV,
8 and newspapers owning either radio or television.
9 Then at the national level there are limits on TV but
10 not radio network mergers, and total national TV, but
11 not radio ownership. And those are the rules that the
12 Commission is reviewing in this proceeding.

13 Now as you probably have already figured
14 out, and as some of the Commissioners have alluded to,
15 these ownership rules were not all created at the same
16 time. For example, the antecedents of the local radio
17 rule traced back almost all the way to 1927 when the
18 Federal Radio Commission, the precursor to the Federal
19 Communications Commission was set up, while the
20 newspaper ownership rule is relatively new, it's about
21 30 years old.

22 Additionally, they are not only different
23 ages, but these rules grew up in silos, so to speak,
24 not always taking account of one another or not
25 overtly taking account of one another. For example,

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1 did you note and if you did you're doing a good job of
2 keeping up, how the local ownership rule usually, but
3 not always, takes account of local market size and
4 when the rule does take account of local market size,
5 they don't all measure the size of the market in the
6 same way.

7 Further, these rules have never before
8 been exhaustively reviewed as part of a single
9 comprehensive package. So it's really quite a
10 daunting task that the Commissioners face and much
11 easier to be a moderator than a Commissioner on this.

12 I think for those of you who are here
13 today, it's important to know not only what the rules
14 are, but why they are being reviewed collectively and
15 so thoroughly today and why the terms, competition,
16 diversity and localism, have come to frame most of the
17 discussion concerning those rules.

18 Let me talk a little bit about why now?
19 Why is the Commission doing this now? You know what
20 rules are on the table. Why are they on the table
21 today? Fundamentally, they're on the table today
22 because of what Congress did in one section of its
23 comprehensive communications law reform legislation,
24 the Telecommunications Act of 1996.

25 When Congress addressed broadcast

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ownership rules in the 1996 act, it did three things.

First, it eliminated the Commission's national radio ownership limits and it raised both the local radio caps and the national TV caps. Then, Congress directed the Commission to immediately tweak a couple of its remaining rules.

Finally, and most importantly here, Congress required the FCC to review each of its remaining broadcast rules every two years. What Congress said is that the question the FCC must address in these biennial reviews is whether "any of the rules" that is the six we just reviewed, "whether any of the rules are necessary in the public interest as a result of competition."

And the Federal Court that reviews the Agency's ownership rules has construed that provision as "carrying with it a presumption in favor of repealing or modifying the rules."

So the Commission has been directed to carry out these reviews now, and then to do it again two years later and again two years after that, etcetera, etcetera. Talk about the communication lawyers perpetual guaranteed income act. I join with all other members of the Federal Communications Bar Association in expressing our undying gratitude to

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1 Congress for having dug this very deep trough at which
2 we may feed for years on end, and apparently, my
3 grandson as well.

4 In addition to doing it every two years,
5 according to the courts, the Commissioners have to
6 approach the task with the presumption to at least
7 modify the rules. Now it's also important to note
8 these facts don't tie the Commission's hands and they
9 don't ordain any particular outcome. Presumption
10 doesn't mean fixed determination, but they do place
11 limits both on how long the Commission can wait,
12 perhaps not much longer than the course of an entire
13 NBA season, and on its ability to preserve the rules
14 without identifying evidence that clearly supports
15 them.

16 Now I wanted to say a few words about the
17 terms of the discussion, what you're going to hear
18 from the veterans or the cognicenti here. As I
19 indicated in discussing the rules, we've had limits on
20 radio and TV ownership virtually from the inception of
21 radio and television services in this country. So
22 there's quite a lot of water already over the dam,
23 including discussions, both learned discussions and
24 unlearned discussions, about what is at stake here.

25 Most people, including most Commissioners

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1 who think about these issues, tend to conclude that
2 the values at stake are those of competition,
3 diversity and localism. And that these are three
4 distinct values, each focusing on a different aspect
5 of the effects of any media consolidation.

6 Let me try to illustrate this by taking a
7 very simple hypothetical for you. Suppose someone
8 wants to buy two television stations in Richmond,
9 Virginia. Without knowing any further details about
10 the transaction, we can already imagine three
11 different potential opponents of that merger. One
12 might say I worry about the effects of the merger --

13 [END TAPE 1, SIDE A; BEGIN TAPE 1, SIDE
14 B.]

15 -- is I worry whether the merged firm,
16 after the merger, will be able to behave
17 anticompetitively, for example, by raising ad rates to
18 monopoly levels or by cutting back its program day in
19 order to restrict output. That's our competition
20 issue.

21 A second opponent might say well, I don't
22 really see a problem with competition here. In fact,
23 this merger might be good for competition. It might
24 create a more efficient firm, but competition is not
25 the only value we care about. I worry about

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1 diversity. What I mean by that is I worry that the
2 merger might result in fewer distinct points of view
3 being aired in Richmond or in fewer differences in the
4 types of programs being offered over the air to
5 Richmond residents.

6 Now my hypothetical's third opponent might
7 say I think that after this merger there will be more
8 robust competition and just as much diversity of
9 program and formats, but I worry about the impact of
10 this merger on localism. That is, I worry that the
11 owners and operators of the merged firm, as compared
12 to the previous firms, will not be as deeply rooted in
13 and in touch with the Richmond communities when
14 programs, personnel or formats are chosen.

15 Now of course, certain broadcast
16 combinations, real ones, not hypothetical ones, may,
17 depending on one's point of view, raise significant
18 questions with respect to one, two, three or none of
19 those values. Nor are these categories of concern air
20 tight. For example, as many of you have figured out
21 already, concerns about localism or competition may
22 each translate into a concern over diversity. There
23 may be other value that needs to be accounted for as
24 well. For one time I'll abuse my privilege as the
25 moderator to interject a personal view here is I

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1 wonder why media consolidation rules should be seen as
2 an aspect of the Commission's spectrum management
3 duties. But since I seem to stand alone on that, I'll
4 retreat back to my other role.

5 I mean to say, however, that if you think
6 something other than competition, diversity or
7 localism may be at stake, you're not necessarily the
8 only one in the room who thinks that.

9 But the fact remains that most of what
10 you'll hear today will be couched in terms of
11 competition, diversity and localism. And how, if at
12 all, the FCC's ownership rules should be influenced by
13 each of those values.

14 And in fact, the staff has arranged the
15 panels, the formal panels around each of those
16 concepts.

17 So as a gross, but I hope useful over
18 generalization, we're going to spend about six hours,
19 snow willing, talking about radio and television
20 ownership patterns, national and local, actual and
21 potential and how those patterns might positively or
22 negatively affect competition, diversity and localism.

23 Got that? That's what we're all here
24 about.

25 Now how are we going to do that? We're

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1 going to do it, please, by following two rules. As
2 your moderator, I'm asking that every participant,
3 panelist, open miker and even Commissioner alike,
4 please agree to abide by two and only two simple rules
5 today. I base these rules on my experiences with
6 public hearings, on my teaching experience and also
7 frankly on my desire to prove that I, too, support the
8 concepts of limited government and freedom of speech
9 from oppressive regulatory oversight. So we'll have
10 only two rules.

11 First rule is please stay strictly within
12 your time limits. You are important. I am important.
13 But she and he are equally important too. Every rule
14 has an exception, of course. Exemptions from this
15 rule will be granted, but only to those who need extra
16 time in order to quote extensively from one of my
17 books.

18 (Laughter.)

19 Or who are Commissioners. Double
20 exemption, if you're both of the above.

21 Secondly, again with the exception of the
22 Commissioners, of course, will you please as a formal
23 matter speak through me. Think of me, if you wish, as
24 a potted plant with a microphone. As moderator, I
25 want to be able to direct the flow of discussion, but

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1 I will not cut it off. We don't want the panelists
2 arguing back and forth with each other. I'd like you
3 to come through me so I can bring other people in, if
4 need be.

5 Thank you, in advance, for following these
6 hopefully simple rules.

7 Now let's hear what's on your minds? For
8 your opening statements, each panelist will be given
9 five minutes and as I mentioned before, I would like
10 you to introduce yourselves because you know better
11 than I just what brings you here.

12 MR. BOZELL: Thank you, Mr. Krattenmaker.
13 My name is Brent Bozell. I'm the Chairman and the
14 founder of the Parents Television Council.

15 Good morning, Mr. Chairman, Commissioners
16 and fellow panelists.

17 Mr. Chairman, I thank you for inviting me
18 to address these hearings, but I confess at the start
19 that I do so with a certain degree of trepidation.
20 There is, for starters the angst one feels when his
21 libertarian sensibilities are assaulted by the mere
22 thought of federal intervention into ownership of
23 private property. It's probably safe to say that I
24 have never taken a position that does anything other
25 than advocate open markets unfettered by government

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1 regulation.

2 It would follow then that as technology
3 advances in the world of communications and presents
4 new opportunities for expansion, we should all rejoice
5 and not interfere with the opportunities provided by
6 those who would enter into the market.

7 Chairman Powell, I believe, agrees with
8 this. I believe he believes this has been the result.
9 And in Chairman Powell's recent interview with a
10 Hollywood reporter he stated, and I quote, "our
11 statistics are since 1960, there's been something like
12 a 195 percent increase in outlets and 139 increase in
13 independent owners."

14 Chairman Powell went on to say "the truth
15 is, by almost any measure, there are more networks
16 than there ever were before. There are more
17 television stations than there ever were before.
18 There are more independent owners."

19 On the face of it then, it would seem that
20 deregulation has worked and media consolidation is but
21 a mythology. But then one scratches the surface,
22 digging a little deeper, in this case looking at the
23 FCC's own statistics and a different picture begins to
24 emerge. In the past 25 years, the number of TV
25 station owners has declined from 500 to 360. There's

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1 been a massive increase in the number of cable
2 channels, yet almost three quarters of them are now
3 owned by six corporate entities, four of which are TV
4 networks. Four entities dominate the most popular
5 cable programming as well as prime time network shows.
6 Six entities control approximately two-thirds of all
7 viewers.

8 The Commission's own research is
9 devastatingly clear. And I quote: "Since there are
10 approximately 106 million TV households, the average
11 number of networks available is over 50 per household.
12 This sounds like a large number. However, when we
13 examine the ownership of these networks, we discover
14 that almost three quarters of them serving
15 approximately 4 billion subscribers are owned by six
16 corporate entities. The four major TV networks, NBC,
17 ABC, CBS, Fox and the two dominant cable providers,
18 AOL-Time Warner and ATT Liberty, completely dominate
19 the tuner."

20 And finally this, "the big three networks
21 went from an ownership share of programming of 17
22 percent in 1989 to 48 percent in 2002 through growth
23 and mergers."

24 This, I believe, is not what deregulation
25 was intended to accomplish. Obviously, the Commission

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1 cares a great deal about the diversity issue and
2 obviously the industry cares a great deal about that
3 issue as well. But what about the public which this
4 Commission and the industry profess to serve? The
5 Parents Television Council has over 750,000 members
6 nationwide. I can only venture a guess, but I suspect
7 that if a survey were taken of them asking them what
8 they believe is the most important issue concerning
9 television today, not one percent would point to
10 diversity or competition or localism or media
11 consolidation as an important issue. But I know what
12 does top their list. Like the average American
13 family, they are disgusted, revolted, fed up,
14 horrified, I don't know how else to underscore this,
15 by the raw sewage of the ultra violence, the graphic
16 sex, the raunchy language that is flooding into their
17 living rooms day and night through the television
18 screen and poisoning the minds of an entire generation
19 of youngsters whose parents' concerns are dismissed by
20 an industry that admonishes them instead to stand
21 guard over the TV sets, perhaps with a baseball bat to
22 keep impressionable children away.

23 Now I ask the media behemoths how
24 important the issue of indecency is to them. I wonder
25 if you will find one single executive, I don't know of

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1 one, who will even speak out on this issue, much less
2 do anything to stop it. And sadly, the FCC's record
3 on the decency issue is lacking. After all, indecency
4 on broadcast TV between the hours of 6 and 10 p.m.,
5 when children are likely to be watching is against the
6 law. And the FCC is charged by Congress with
7 enforcing the law.

8 How many stations in the continental U.S.
9 has it fined over the years since its Enforcement
10 Division was formed for broadcasting indecent
11 material? According to our research of the FCC's
12 website, the answer is none.

13 So I would ask the Commission to consider
14 this. If the public good is what is driving this
15 debate, then the Commission ought to consider what it
16 is the public wants, not what the network elite wants.
17 The public is demanding that television shape up and
18 stop poisoning the culture.

19 Our hope is that as the Commission debates
20 the diversity and media consolidation issue, it keeps
21 at the forefront the one question that really matters.
22 What is the formula that will safeguard the rights of
23 families?

24 Thank you, Mr. Chairman.

25 MR. KRATTENMAKER: Thank you. Mr.

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1 Corn-Revere?

2 MR. CORN-REVERE: Thank you, and thank you
3 Mr. Chairman and Commissioners for inviting me to
4 address this very important issue.

5 I am a partner of the Washington law firm
6 of Hogan and Hartson, although I should add as sort of
7 a footnote to my affiliation that that's going to last
8 for exactly one more day. On Monday, I become a
9 partner in the Washington, D.C. Office of Davis Wright
10 Tremaine. I am not speaking on behalf of any clients
11 today. I'm presenting solely my own views.

12 It's interesting this proceeding is about
13 the broadcast ownership rules, but it's remarkable the
14 extent to which it is becoming a discussion of
15 broadcast content more than anything else, as Mr.
16 Bozell's comments just indicated. The common
17 denominator is a purported link to concentration which
18 appears to create a multitude of sins beyond just a
19 generalized concern about diversity.

20 Some participants in this proceeding argue
21 that the media concentration has made television
22 bland. Others claim that it leads to more programming
23 that is decent or violent. Raw sewage, I guess, is
24 the expression that Mr. Bozell used, indicating he's
25 clearly been able to overcome his libertarian

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1 sensibilities.

2 Still others suggest that media
3 concentration affects program quality, including the
4 quality of news reports. The latest claim was made
5 this week by Senator Zell Miller of Georgia. In an
6 impassioned speech on the Senate Floor, he sharply
7 criticized CBS for its planned reality show, "The Real
8 Beverly Hillbillies." Senator Miller seemed to blame
9 the advent of the show on media concentration,
10 contrasting the current CBS Viacom Corporation with
11 the CBS network of 1960s when, as he put it,
12 "courageous CBS reporters risked their lives to cover
13 the civil rights struggles in the South." Oddly
14 enough, in 1963, CBS was criticized in Senate hearings
15 for following the NAACP line.

16 Now this example struck me as particularly
17 strange because as a kid growing up in rural Illinois,
18 some of my favorite shows were on CBS and they
19 included "The Beverly Hillbillies," "Petticoat
20 Junction," and "Green Acres." I still one day aspire
21 to having a cement pond.

22 (Laughter.)

23 Of course, there weren't many alternatives
24 at the time. We received three over-the-air stations
25 and cable was a long way off. Satellite TV, VCRs and

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1 DVDs and personal digital video recorders weren't even
2 a gleam in the eye.

3 By comparison, it's difficult to
4 understand some of the current claims about reduced
5 diversity. It's sobering, for example, to realize
6 that when Chairman Newton Minnow called television a
7 vast wasteland in May 1961, fewer programs were aired
8 in New York, the largest medium market in the world,
9 on all of its television stations each week than there
10 are channels today.

11 It seems to me that blaming concentration
12 in the media for the programs we don't like is
13 somewhat like the drunk who searches for his keys
14 under the street light, not because that's where he
15 lost them, but because the lighting is so much better
16 there.

17 (Laughter.)

18 After all, it's clear that the Commission
19 would bump up against the first amendment pretty
20 quickly if it tried to force programming that was less
21 bland or if it tried to, God help us, ban those stupid
22 reality TV shows.

23 There appears to be a belief by some that
24 the government can achieve its goal of content
25 regulation if only it frames its rules as economic

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1 regulations. The thought is that programming can be
2 achieved by indirection, rather than by direct
3 regulation.

4 Of course, it's also true that threats of
5 new structural regulations or promises of relaxation
6 of existing rules can become powerful inducements in
7 getting broadcasters to reform their editorial
8 policies.

9 The Commission should bear in mind that
10 such economic regulations are not immune from first
11 amendment scrutiny where their purpose is to affect
12 the programming content on broadcast television.

13 There have been a few examples that we've seen in the
14 past, for example, the U.S. Court of Appeals for the
15 District of Columbia Circuit struck down a provision
16 that prohibited extending any existing newspaper
17 broadcast cross ownership waiver where it was
18 motivated by hostility to the editorial policies of
19 Rupert Murdoch.

20 Similarly, the D.C. Circuit has struck
21 down EEO rules designed indirectly to promote minority
22 viewpoints. The court said that it was too amorphous
23 to simply promote diversity in the abstract, but on
24 the other hand opined that if you were to try and
25 promote specific viewpoints, then you would encounter

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1 significant first amendment problems.

2 More recently, the court held that the
3 FCC's general power must be interpreted narrowly when
4 it comes to programming issues, since such matters
5 inevitably raise first amendment questions.

6 Trying to devise regulations with the
7 purpose to improve the quality of broadcast programs
8 is entirely too nebulous a goal and too difficult to
9 attain. The FCC adopted the prime time access rule in
10 the 1970s to promote news events and public affairs
11 and instead brought us "The Gong Show."

12 The current demands to bring back the
13 financial interest in syndication rules face the same
14 problem. We are told that programs will be more
15 creative and less bland if FCC limits the amount of
16 network programming that the networks can own in prime
17 time. But this argument was made to the Commission
18 before in 1991 when the Commission was considering
19 Fin-Syn rules at the time. My boss at the time,
20 Commissioner Quello, addressed the issue of
21 programming quality and creativity in his dissent from
22 the decision in 1991 not to eliminate the rules at the
23 time.

24 And if I can beg your indulgence just to read what he
25 said at the time --

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1 MR. KRATTENMAKER: The objection will be
2 -- cover the quotations from an illustrious
3 Commissioner.

4 MR. CORN-REVERE: Yes, thank you very
5 much. At the time he wrote in his dissent, when
6 presented with the argument that the creativity and
7 quality of network programs would increase only if you
8 retain the Fin-Syn rules he said, "I asked one
9 executive from an independent production company who
10 had been urging me to preserve creativity and quality
11 in television exactly how network involvement would
12 have changed the company's most successful show, 'The
13 A-Team.' He was stuck for an answer. Yet, even if he
14 had been able to describe the particular ways in which
15 barring a network's financial interest would improve
16 'The A-Team,' I'm not at all certain that I would want
17 my public interest calculated in this proceeding to
18 turn on that answer."

19 MR. KRATTENMAKER: Thank you.

20 MR. CORN-REVERE: Thank you.

21 MR. KRATTENMAKER: Mr. Ireland?

22 MR. IRELAND: Yes, good morning, Chairman,
23 Commissioners, distinguished guests. I'm Jay Ireland,
24 President of the NBC Television Stations and I'm
25 delighted to speak with you this morning regarding the

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1 realities of today's media marketplace that we compete
2 in.

3 As you've heard from a number of people,
4 today's world is not the world of forty years ago when
5 markets like Washington, D.C. had fewer than 30 local
6 metropolitan media outlets and Richmond had a mere
7 handful.

8 Today, Washington has 65 broadcast
9 stations alone and literally hundreds of other media
10 outlets including hundreds of cable or satellite
11 television networks, a hundred or more satellite radio
12 channels, dozens more daily or weekly newspapers, and
13 most importantly, the internet which empowers every
14 user to be his or her own programmer, editor or
15 content creator.

16 According to the FCC's own data, there's
17 been nearly a 200 percent increase in the number of
18 media outlets and 139 percent increase in the number
19 of owners since 1960.

20 Let's look at the media landscape today
21 that we compete in. There are over 2200 commercial
22 television stations. Eighty-five percent of TV homes
23 receive their signal from either cable or satellite
24 which we've heard previously. The average number of
25 channels received is 89 of which roughly 14 are

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1 over-the-air.

2 Here's another way to look at it. During
3 prime time, the NBC and Telemundo stations attract
4 less than 3 percent of the nation's total television
5 audience. Yet, the FCC rules assume that nearly 35
6 percent of the nation's television audience is
7 continually watching NBC and Telemundo.

8 The programming side is equally
9 competitive. NBC used to compete against two other
10 networks to acquire first run prime time programming.
11 Now it has to compete against as many as six other
12 general entertainment, English language broadcast
13 networks and over 100 targeted cable networks. As a
14 result, on a typical night only 50 percent of the
15 television viewers are watching the four major
16 networks. This unprecedented and ever growing level
17 of media and programming diversity is a reality of
18 today's media marketplace.

19 In this diverse marketplace, it makes no
20 sense to treat the broadcasting industry with
21 ownership rules developed more than a half century
22 ago. Those rules were based on a view of the world
23 where broadcast television was the only source for
24 video programming. That world no longer exists as we
25 know. Therefore, the rules must reflect today's

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1 marketplace.

2 Let me now turn to the issue of diversity.
3 Some advocates for more government intervention argue
4 that relaxation of the national cap risk a local
5 viewpoint. The reality is that in large markets there
6 is virtually no solely local ownership of television
7 stations. The only thing the cap does is protect
8 national groups, many of which own 20 or more
9 stations, from having to compete with network owned
10 stations and markets.

11 Some who seek continued government
12 protection argue that the national cap protects the
13 affiliate's ability to pre-empt programming. That's
14 not true. On average, a network affiliate pre-empts
15 about as often as the average network O & O and an NBC
16 affiliate uses only half of its annual pre-emption
17 basket which are the number of hours of network
18 programming an affiliate can pre-empt for any reason
19 at all.

20 Indeed, the network-owned stations
21 broadcast programming that is more local than the
22 programming of the affiliated stations. As an
23 example, NBC has owned Telemundo for less than a year
24 and we have already added many newscasts in several
25 key Spanish language markets. Also, the NBC-owned

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1 stations, on average, air more hours of local news per
2 week than the independently owned stations.

3 The real measure of local relevance is the
4 viewership in the community and on average, NBC's
5 owned and operated stations perform at least as well,
6 if not better, than most independently owned stations.

7 There's another way the FCC rules inhibit,
8 rather than promote program diversity. NBC is up
9 against the cap because it wants to make Telemundo a
10 competitive Spanish language network. The cap
11 prohibits NBC from continuing its efforts to acquire
12 stations that might improve Telemundo's ability to
13 provide real diversity of programming. That's the
14 reality of the cap.

15 Let me quickly address ownership, local
16 ownership rules. Some argue that local viewpoint
17 diversity would be lost if any party was allowed to
18 own more than two television stations regardless of
19 the size of the market or the stations involved. But
20 the reality is that every market in the country has
21 plenty of media outlets to ensure viewpoint diversity,
22 even if the local ownership rule is relaxed.

23 Moreover, the FCC's existing rules treat
24 different markets differently. The FCC believes that
25 I can own two of nine stations without risking

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1 diversity in a smaller market, but in a larger market
2 with many more stations, I am still limited to two
3 stations. This result defies logic.

4 Some assert the common ownership results
5 in common viewpoint. The reality is viewers demand
6 differentiated content. It would not be in our
7 economic interest to simply offer similar viewpoints
8 on multiple stations. As an example, the NBC and
9 Telemundo stations in the same market, I can tell you,
10 clearly do not offer similar programming.

11 In conclusion, relaxation of the
12 Commission's ownership rules will not diminish
13 diversity. What will diminish diversity is the loss
14 of media outlets because they can no longer compete in
15 today's fragmented marketplace. If those who want
16 more government intervention win, the reality will be
17 that viewers will lose. This is because the broadcast
18 networks will no longer be able to afford to obtain
19 the top quality programming that viewers have grown
20 accustomed to and on the local level, groups will not
21 be able to gain efficiencies needed to compete.

22 The best protection against television
23 becoming an increasingly marginalized source of
24 information and entertainment in today's marketplace
25 is not more regulation, but more competition,

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1 nationally, locally and in programming.

2 Thank you.

3 MR. KRATTENMAKER: Mr. Liggins?

4 MR. LIGGINS: Good morning, Mr. Chairman,
5 and to the other Commissioners as well. I am Alfred
6 Liggins, Chief Executive Officer and President of
7 Radio One, Incorporated. Thank you for inviting me to
8 speak before you today on this important issue of the
9 benefit of diversity in media ownership.

10 I'm here today to share with you my
11 experience and views on how diversity and media
12 ownership have positively affected the broadcast
13 industry and the American public. I trust that at the
14 conclusion of this hearing, I will have provided some
15 additional insight as to the difference such diversity
16 can make to the public debate and dissemination of
17 information.

18 This is the twenty-fifth anniversary of
19 the 1978 minority ownership policy statement whose
20 history stands as an example of what creative
21 rulemaking can accomplish. In 1978, there was only
22 one minority owned television station and 59 minority
23 owned radio stations. By 1995, when the tax
24 certificate policy was repealed in comparative
25 hearings basically came to an end, there were 35

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1 minority owned television stations and about 320
2 minority owned radio stations.

3 Today, in Richmond, Virginia, Radio One is
4 the only minority owned broadcaster. Prior to
5 deregulation there were numerous other minority
6 owners. The significant decrease in the number of
7 minority owned television and radio stations is an
8 illustration of how federal rules and policy making
9 can dramatically change the landscape of equal
10 opportunity and diversity.

11 I would like to devote a minute or so to
12 providing some background information on Radio One.
13 As Radio One is the largest African-American
14 controlled radio broadcasting company in the United
15 States, this background information will be relevant
16 to our discussion today.

17 My mother, Katherine L. Hughes, founded
18 Radio One in 1980. Owning a radio station was the
19 fulfillment of her goal of increasing the number of
20 African-American voices heard on radio.
21 Interestingly, she was able to realize this goal by
22 taking advantage of the FCC's distress sell policy.
23 Radio One's entre into broadcasting commenced with the
24 acquisition of station WOL-AM in Washington, D.C. For
25 seven years, this was the company's sole station and

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1 yet operating at a mere thousand watts it established
2 the cornerstone of the company's core mission,
3 presenting news, entertainment and information from
4 the African-American perspective. It was on WOL-AM
5 that my mother pioneered a new and innovative format,
6 24 hour talk from a black perspective and adopted the
7 slogan, "information is power."

8 The meaning of that slogan was as relevant
9 and important to her generation as it is to mine. The
10 ability to control the airways through ownership gives
11 one the power to proactively inform, educate and
12 inspire one's community. I am certain that if my
13 mother had not been the owner of WOL, she would not
14 have had the opportunity accomplish this important
15 goal.

16 Over the past two decades, Radio One has
17 grown from that single AM station to 65 stations in 22
18 markets and also provides programming to 5 channels on
19 FM satellite radio, one of which is a simulcast of
20 WOL. Radio One's expansion to a company of national
21 scope is attributable in part to the decision to go
22 public in 1999 which made capital more accessible and
23 less expensive and Clear Channel's commitment to
24 divest a number of stations being acquired from its
25 AM-FM acquisition to minority-owned companies, an

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1 example of deregulation actually creating more
2 diversity.

3 Through that divestiture, Radio One
4 acquired stations in such major markets as Los
5 Angeles, Dallas and Houston. Although we are a public
6 company, my mother and I continue to retain a majority
7 of the voting control of Radio One. In spite of our
8 significant growth, we have continued to maintain our
9 core focus, providing entertaining and informative
10 content that serves the needs of the African-American
11 community.

12 Of our 65 stations, 60 have formats that
13 are targeted toward the African-American listener.
14 Our diverse programming formats include black talk,
15 hip hop, R & B, jazz and gospel. I believe that
16 unlike many of our majority owned counterparts, we
17 offer to our listeners a viewpoint that is more
18 specifically focused on their community's interests
19 and needs.

20 Studies have shown that there are
21 significant disparities in the treatment of
22 African-Americans in local and national news. In
23 addition, African-Americans still face a lack of
24 quality programming in the media focused on their
25 needs, interests and perspectives.

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1 I strongly believe that minority owned
2 radio stations provide more minority focused content
3 and a greater focus on the concerns of the minority
4 community. Likewise, our listeners take great comfort
5 in knowing that the information and opinions presented
6 are derived from a shared perspective that there is a
7 collective stake in the issues being discussed.

8 Perhaps the best way to illustrate this is
9 to point out a few examples of how Radio One uniquely
10 serves the needs of its listeners. Our stations
11 regularly provide important health care information
12 that is relevant to African-Americans, including
13 information concerning the disparity and the quality
14 of health care, the significantly higher mortality
15 rate and the increased risk of heart disease. We also
16 provide information on college admissions, sponsor
17 college scholarship opportunities and help raise funds
18 in support for historically black colleges and
19 universities. We've raised cash and other donations
20 for Princeville, North Carolina, the oldest town in
21 America incorporated by freed slaves which was
22 devastated by flood.

23 On a regular basis, we sponsor job fairs
24 and other events in the African-American community and
25 promote voting and other civic participation. These

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1 are just a few of the ways in which we attempt to
2 serve the needs of our listeners.

3 Obviously, I cannot state with certainty
4 that these issues are not of important concern to our
5 nonminority owned companies, however, I can assure you
6 that as an African-American owner, I am committed to
7 ensuring that Radio One continues to focus on the
8 African-American community and to present that
9 viewpoint to the American public.

10 We've also just announced a new cable
11 venture with Comcast Corporation. Comcast
12 Corporation, now the largest cable operator in the
13 country, shares Radio One's view of the importance and
14 of the need for more diverse programming and as a
15 result has committed to a significant investment and
16 resources in this channel in order to make this a
17 reality. Yet another example of deregulation
18 increasing diversity.

19 Thank you.

20 MR. KRATTENMAKER: Thank you very much.
21 Ms. Riskin?

22 MS. RISKIN: Thank you. I am Victoria
23 Riskin, President of the Writers Guild of America,
24 West, which represents the great majority of writers
25 and producers who create prime time entertainment

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1 programs and I would like to add the good programs.

2 Thank you for inviting me to speak about
3 the importance to the nation of diversity in media.
4 The media are the modern day American town square, the
5 place where people from different backgrounds and
6 points of view share their stories and the public
7 learns about the world. Here is where American
8 democracy comes alive and the American identity is
9 forged. But today, barriers have been erected to keep
10 all but a handful of voices from being heard in our
11 town square.

12 The Commission and the courts have asked
13 for data about diversity in entertainment programming.
14 As President of the Writers Guild, I can tell you that
15 over the past decade, diversity of production sources
16 in the marketplace has been eroded to the point of
17 near extinction.

18 In 1992, only 15 percent of new series
19 were produced for a network by a company it
20 controlled. Last year, the percentage of shows
21 produced by controlled companies more than quintupled
22 to 77 percent.

23 In 1992, 16 new series were produced
24 independently of conglomerate control. Last year,
25 there was one.

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1 The opportunity for access for a broad
2 range of voices has been cut dramatically. The claim
3 has been made that because we now have hundreds of
4 channels on cable, choices abound. But more channels
5 does not really mean more choices. In the past, the
6 FCC has defined a major network as one that reaches 16
7 million or more homes. By that definition, there are
8 91 major networks. But of these 91, 73 or fully 80
9 percent are owned or co-owned by six corporate
10 entities. Five of these six are the same corporations
11 that run the broadcast networks; Viacom, Disney, News
12 Corporation, General Electric and AOL-Time Warner.

13 Any doubt about the control exercised by
14 these five companies was dispelled in a recent report
15 by respected Wall Street media analyst Tom Wolzien
16 which I've attached to my comments. Wolzien points
17 out that a strong programming oligopoly is beginning
18 to re-emerge. For December 2002, he found that the
19 five conglomerates controlled about a 75 percent share
20 of prime time viewing. Wolzien concludes that over
21 the next few years with the further consolidations he
22 expects to occur, these five companies will control
23 roughly the same percentage of TV households in prime
24 time as the three networks did 40 years ago. In other
25 words, the control by a few conglomerates will be as

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1 absolute as ever in history.

2 The data we submitted to the Commission
3 documenting the dominance of content by a handful of
4 vertically integrated conglomerates has been
5 corroborated by an independent analyst. No longer can
6 anyone argue that the facts of such control or their
7 potential impact are in doubt. The old programming
8 oligopoly of media content is being rebuilt.

9 The creative community has seen in recent
10 years how increasingly difficult it is to bring
11 innovative shows to the air. All too often, indeed
12 virtually invariably, to get their work on television,
13 writers and producers must cede ownership and creative
14 control to the network or cable companies. Most have
15 no choice, none at all. They must accept the network
16 or cable company as a partner and surrender their
17 independence with the result that if their show does
18 not make the schedule, they are now prohibited from
19 taking it elsewhere.

20 Nearly 100 small and medium size
21 businesses, each with its unique point of view have
22 disappeared in the last 10 years. Why is the
23 disappearance of a small independent producer and
24 writer an issue for public concern? Because with them
25 have gone stories from hundreds of writers and

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1 producers who care deeply about original drama,
2 comedy, history, culture and not just, for example,
3 just ratings, ratings, all the time, ratings.

4 We ask you to consider the rules governing
5 media ownership, as you do that you look to expand
6 diversity, not limit it to these gigantic
7 corporations. We ask you to take constructive action
8 to remedy the serious imbalance that has taken root in
9 the programming marketplace.

10 We are asking you to ensure that a few
11 companies do not continue to have a strangle hold on
12 free expression and open debate.

13 MR. KRATTENMAKER: Ms. Riskin, your time
14 is up.

15 MS. RISKIN: Thank you.

16 MR. KRATTENMAKER: Did you wish to
17 conclude? Okay, thank you.

18 I just wanted to remind members of the
19 audience that if you wish to -- there are cards in the
20 back you can fill out if you've got questions you want
21 to ask of the panelists. If we have time, I will try
22 to ask some of these questions. If not, we'll get to
23 them at some other point. So we welcome receiving the
24 cards.

25 That did not come out of your time, Mr.

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1 Schwartzman.

2 MR. SCHWARTZMAN: Thank you, Mr.
3 Krattenmaker. Thank you. I believe the Commission
4 and should retain its existing ownership rules, except
5 that it should eliminate the so-called UHF discount.
6 Five minute, five points and a sixth about Telemundo,
7 if there's time.

8 First, while I feel genuinely honored to
9 have been asked to speak today, at the risk of seeming
10 discourteous, I must observe that today's hearing is
11 not likely to be very useful. To develop a complete
12 record, you need to hold more hearings under different
13 conditions and I don't just mean weather. The purpose
14 of field hearings is to paint viewpoints and
15 perspectives which are unavailable at home. This
16 principle is especially relevant to a panel on
17 diversity. But unlike the public forum held at
18 Columbia University last month, today's agenda has too
19 many familiar faces from inside the beltway and too
20 few additional perspective from local residents.

21 Mr. Corn-Revere and I have frequently
22 debated each other in professional meetings in
23 Washington where we both work.

24 Ms. Thompson and Mr. Bozell also work
25 inside the beltway.

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1 Mr. Liggins' office is technically outside
2 the beltway, but it's actually within sight of the
3 beltway and for all practical purposes is inside the
4 beltway.

5 We didn't need to brave a snowstorm to
6 present viewpoints available to you back home.

7 (Applause.)

8 Not only that, the structure of today's
9 hearing offers little opportunity for the exchange of
10 ideas. Seven panelists, five minutes each, 50 minutes
11 total, do the math. This is especially disappointing
12 inasmuch as the record developed in this docket as
13 Commissioners Copps and Adelstein have pointed out,
14 raised many questions as to which there is yet not
15 enough answers. This event does little to fill in the
16 blanks and answer those questions.

17 Second, I want to say what I've said to
18 the Commission on other similar occasions. We have
19 the best system of broadcasting in the world because
20 of, not in spite of, the ownership regulations
21 utilized since 1934. The Commission is mandated to
22 ensure that broadcasters serve all members of the
23 public. The marketplace works well in many respects,
24 but it is not perfect. In particular, the market does
25 not recognize and serve the needs of those who are too

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1 old, too young, too poor to be demographically
2 attractive. Large group owners who increasingly lack
3 roots in the community they serve are less likely to
4 meet the needs of everyone.

5 Over the last 25 years, I've testified
6 before the Commission and Congress on many occasions.
7 More often than not, I appear as I do today with
8 broadcasters who exemplify the best service standards
9 in the industry. But I urge you to focus on the fact
10 that the Commission must regulate on the proclivities
11 of the worst and most rapacious among them. You need
12 to pay attention to who does not attend these
13 hearings. Relaxation of national ownership caps and
14 creation of larger local ownership combinations has
15 permitted some broadcasters to ignore news programming
16 and to abandon their communities in favor of voice
17 tracking and central casting.

18 Third, I think the Commission has set an
19 artificially high bar for those of us who support the
20 existing ownership rules. We've been told to avoid
21 emotionalism and confine ourselves to presenting
22 empirical data to support the rules. I do not
23 apologize for being emotionally attached to localism,
24 diversity and the first amendment. Moreover, the term
25 empirical has been wrongly equated with statistical.

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1 My dictionary defines empirical as meaning capable of
2 being verified or disproved by observation or
3 experimentation. Much empirical evidence is not
4 statistical and the Commission should not be ignoring
5 such observational evidence.

6 Fourth, I believe that at least some
7 members of the Commission and staff have placed an
8 undue emphasis on searching for elusive formulae. The
9 Commission has been created as an expert agency
10 because Congress expects it to make predictive
11 judgments. In calling for you to exercise this broad
12 and necessarily subjective discretion, I'm not
13 offering an excuse to justify a result that I seek.
14 Indeed, such predictive judgments can and have been
15 used over the last 20 years to deregulate more often
16 than they've been used to regulate.

17 Fifth, and notwithstanding what I've just
18 said, the civic, consumer, labor and civil rights
19 groups that have filed in this docket have submitted
20 powerful and detailed statistical evidence which
21 strongly supports retaining existing rules. They've
22 also pointed to shortcomings in the study the
23 Commission has generated and unlike the broadcasting
24 industry, they have also responded to the Commission's
25 request for metrics which can be employed to measure

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1 concentration. While such formulae should be one of
2 many factors the Commission should consider, my
3 colleagues have presented a scheme based on developing
4 a weighted HHI index which would be a significant
5 improvement over the traditional HHI employed in other
6 economic sectors and I urge you to consider it.

7 Finally, with respect to what's been said
8 about Telemundo and NBC's concern that the ownership
9 cap is holding it down, I think the answer here is
10 waivers and I'll be happy to sit down with Mr. Ireland
11 and Ms. Thompson. If they want to have a waiver of
12 the national ownership cap for second language
13 programming, that's a perfectly legitimate public
14 interest justification to present as a waiver, but
15 it's not a reason to throw the baby out with the
16 bathwater.

17 Thank you.

18 (Applause.)

19 MR. KRATTENMAKER: Thank you. Ms.
20 Thompson?

21 MS. THOMPSON: Buenos días. It's a great
22 honor for me to have the opportunity to address such a
23 distinguished Commission and audience. I am here
24 representing ZGS Broadcast Holdings which is a
25 minority-owned broadcasting company.

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1 E pluribus unum. The strength of this
2 great nation is founded upon the principle of e
3 pluribus unum, out of many, one. The intrinsic value
4 of this coin reflects the progress of this nation
5 throughout history, a prosperity that is clearly
6 rooted in the diversity of its people and consequently
7 of its business community.

8 The Hispanic community has grown to become
9 the largest minority group in this country. However,
10 Hispanic participation and representation in the
11 broadcasting industry continues to decline, which is
12 both a concern for our community and a concern from a
13 public policy perspective.

14 I am here today to express unequivocally
15 the importance of protecting and promoting minority
16 representation in the broadcasting industry. As the
17 Federal Communications Commission considers changes in
18 the current ownership rules, it is my sincere hope
19 that it will not allow conciliation and survival of
20 the biggest to do away with the small and community
21 rooted broadcasters that offer a unique service to the
22 public. On the contrary, it will be my hope that the
23 Commission looks to create and ensure opportunities
24 for small and minority broadcasters to thrive and
25 prosper into the future.

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1 Fifteen years ago, Ronald Gordon,
2 President and owner of our company, ZGS Broadcasting
3 Holdings, had the vision and commitment to see that
4 the Hispanic market will someday become a strong and
5 prosperous business opportunity. Born and raised in
6 Peru, Mr. Gordon embraced his Hispanic roots and the
7 potential in serving a community that very few people
8 knew, valued or cared to serve. His pursuit of the
9 American dream -- in Spanish broadcasting -- was an
10 incredible, difficult and challenging task. The only
11 viable financial option was low power television and
12 given the limitations and secondary nature of the LPTV
13 service, no financial institution was willing to back
14 him. Ultimately, not surprising, it was a Hispanic
15 run bank that provided him the funds to acquire ZGS'
16 first station. He risked and personally guaranteed
17 his assets in order to offer our growing community a
18 television station it could call its own. Since then,
19 ZGS' commitment to higher standards and service to the
20 Hispanic community have allowed the company to grow
21 into the largest affiliate of the Telemundo network
22 with LPTV Class A stations in Boston, Hartford,
23 Springfield, Providence, Orlando, Tampa and
24 Washington, D.C., along with radio properties in
25 Washington, D.C. and Tampa.

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1 Today, ZGS Broadcast Holdings has over 160
2 employees of which 90 percent are of Hispanic descent.
3 My station, WCDC, has over 25 employees and each one
4 of us has an unwavering commitment to serve our
5 audience. Through our local news and Washington's
6 only Spanish-language public affairs program, Linea
7 Directa, the Hispanic community in this area is kept
8 informed of core issues. We are the community's only
9 vehicle to learn about the services and opportunities
10 available in our region. That is why we devote so
11 much effort to our educational projects such as our
12 Read to Succeed literacy campaign, the focus is on the
13 importance of literacy and scholastic achievement for
14 the success of our community.

15 We are very proud to be a Hispanic-owned
16 broadcaster and prouder still of the difference we
17 make in our communities. Our motto says it all, La
18 Voz de la Comunidad, the Voice of the Community.

19 There are several initiatives that the
20 Commission can consider to encourage and promote
21 diversity in broadcasting. As community broadcasters,
22 we can appreciate the opportunity that an enhanced
23 LPTV service can offer smaller broadcasters and I
24 would encourage the Commission to review how the
25 coverage and the status of this television service can

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1 be improved and solidified.

2 Class A was a critical addition for
3 community broadcasters which allow many small and
4 minority players to stay in the game. ZGS' stations
5 are all Class A and as you have just heard, we do more
6 in our communities than many full power stations
7 across the country. Our business is not just about
8 dollars and cents. We would like to think that it
9 represents more public value and better use of the
10 public airways than home shopping.

11 But Class A is simply not enough. Like
12 all broadcasters, small community broadcasters need
13 access to distribution, cable distribution. As Class
14 A stations, we have to comply not only with all the
15 regulatory requirements of full power stations that
16 provide local programming, which full power stations
17 do not need to do. Bigger is not necessarily better
18 and my hope is that the Commission will consider
19 providing Class A community stations which provide
20 local content and local service with the same
21 privileges accorded to full power stations, especially
22 [in Spanish.]

23 MR. KRATTENMAKER: Thank you.

24 (Applause.)

25 MR. KRATTENMAKER: That concludes the

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1 panel's remarks. Technically, we have run out of
2 time, but people have done an excellent job of staying
3 within this timeframe, but it's obvious that I'm sure
4 the Commissioners have many questions they want to
5 ask, so why don't we begin with the Commissioners.

6 Commissioner Adelstein?

7 COMMISSIONER ADELSTEIN: Thank you, Mr.
8 Krattenmaker.

9 Mr. Ireland from NBC, I have a question
10 for you, and Mr. Schwartzman, maybe if you could
11 respond as well.

12 You raised a very interesting point. You
13 said the internet can serve, allow people to become
14 their own programmer or editor. You'll be happy to
15 know that my staff person gets her weather from NBC4
16 in Washington, D.C. When she doesn't have the
17 opportunity to get it on television though, guess
18 where she goes? She goes to your NBC4 website. So
19 you win in both cases.

20 The question is she doesn't go to the
21 National Weather Service and do her own forecast.
22 Similarly, today's hearing for example, I doubt many
23 people are going to go to the web and look at all the
24 testimony, read all the testimony. The vast bulk of
25 people that hear the story at all, are going to get it

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1 on the Washington Post website or on the website of
2 their local newspaper or in their newspaper itself.
3 They're not going to want to process and be their own
4 programmer or editor, as much as they might like to.

5 So my question is for you, first of all,
6 isn't a lot of what people get over the internet on
7 major sources that are already owned by the major
8 corporations in America and do people really want to
9 be their own editor or programmer? Does the internet
10 really function as a substitute for programming that
11 they get on their news sources?

12 MR. IRELAND: Well, I believe that the
13 internet does provide a varied amount of access to
14 people to a lot of information. Yes, we do have a
15 website that ties into our television station, but it
16 pales in comparison from the standpoint of what The
17 Washington Post gets and what the Weather Channel
18 might get for someone to check weather.

19 There's also many national news services
20 available, as well as information from just knowledge
21 or whatever people may want to look at.

22 There's no way that we can direct the
23 users of the internet to our sites. They have the
24 complete flexibility to cruise. They can google, they
25 can do whatever they want to try to figure out how to

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1 get to a site. We hope that they come to our sites
2 because we have compelling content. We address their
3 local issues. We address what their concerns might be
4 around some areas that we deal in.

5 We obviously cannot be everything to
6 everybody, but at least in that specific example,
7 again, the people have the power of choice and we just
8 hope that as they go through that we're able to
9 provide them an alternative for them to choose from.

10 MR. SCHWARTZMAN: The short answer is that
11 the internet has yet to become and may never become a
12 significant source of original, local content about
13 news and information. Virtually all of the locally
14 generated information available on the internet is
15 recycled from local newspaper and broadcast properties
16 who have leveraged their incumbent status. In fact,
17 the three sites just mentioned, Washington Post, NBC4
18 and Weather Channel which is Discovery Communications,
19 excuse me, Landmark Communications, are all major
20 media operators.

21 The Commission's own data about --

22 [END TAPE 1, SIDE B; BEGIN TAPE 2, SIDE
23 A.]

24 -- reached the conclusion that internet
25 and other sources are not effective substitutes.

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1 Professor Owens' study is particularly egregious in
2 failing to take that into account. Even using a .1
3 level of statistical significant, the Waldfogel
4 (Phonetic) study shows almost no substitution. The
5 short way to view it is as follows: when somebody
6 wants to get elected to public office, do they buy
7 internet banner ads or television ads? Thank you.

8 CHAIRMAN POWELL: I'd like to ask a more
9 general question that I think underlies all of that
10 and by the way I would note that a major Democratic
11 Presidential candidate has announced that his
12 Presidential Office is on the internet. It suggests
13 that the internet may not be there yet, but is
14 certainly maturing as a source of political discourse
15 or you wouldn't have a Presidential candidate using it
16 so extensively.

17 I also would note that where most people
18 go to get their weather is the Weather Channel which
19 isn't one of the dominant ones being alluded to so
20 frequently.

21 I think one of the things that is
22 difficult for us and I think difficult for all of you
23 is when is popularity dominant and not just
24 popularity? We talk a great deal about paying
25 attention to what consumers want, but half the time

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1 what we're railing against is what consumers chose.

2 Mr. Bozell, I have two young children and
3 I care a lot about what they watch on TV. I don't
4 think I stand there with a baseball bat, but I
5 certainly pay attention to what they see. But I don't
6 know how to dismiss as a government official the fact
7 that there may be a class of programming to which a
8 vast majority of individual American citizens prefer
9 to watch and it may not be the programming that I
10 would choose for my child to see or may not be the
11 programming that certain groups would prefer to see,
12 but there is an element of the public interest that is
13 what interests the public. And I've often heard and I
14 respect the argument there should be some concern
15 about our culture and our society, but it's very
16 difficult to quantify as a matter of governmental
17 action when you're going to take steps to go beyond
18 what it is the public itself responds to.

19 So we can be disparaging of that. We can
20 call it sludge, but it's the sludge people are
21 watching. We could call it dominance, but it's the
22 quality choices that people are making. And where
23 I've always struggled with this is how does government
24 distinguish between what ought to be the rights of
25 individual citizens to watch what they choose, not

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1 what the government would prefer that they see.

2 And so help us with that basic underlying
3 tenet. When is it not what interests the public, but
4 it's something that either your group or someone else
5 thinks they would be better served to see?

6 MR. BOZELL: That's a good question, Mr.
7 Chairman, and I'm not sure that there is an easy
8 answer to that question. However, I would submit to
9 you that when you've got a handful of corporations
10 controlling two thirds of the access of the programs
11 of the networks that are out there, then what they
12 determine is going to go on television is what can by
13 itself determine what the market wants. If the
14 market, as this lady, I don't recall her name, she
15 makes the point dramatically, when the public is
16 getting a certain message, a certain kind of program,
17 a certain value system, and is being hammered with it
18 and hammered with it and hammered with it and all the
19 other voices are never presented to it, well,
20 ultimately, there is going to be a significant part of
21 that market that is going to accept that message and
22 want more of it but has no idea that there are other
23 messages.

24 I talk to people who are in the industry
25 who are producers, writers, primarily who are

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1 attempting to come out with product and they feel like
2 they're bashing their head against the wall because
3 there's nowhere to go because the corporate mentality
4 of these major corporations is just simply not
5 interested in that voice in that kind of programming.

6 And so it never gets out to the public. So in the
7 final analysis, how do we know what the market wants?

8 MR. KRATTENMAKER: I don't know which is
9 the best way to go, but maybe we'll just work down and
10 we'll talk to Mr. Copps.

11 COMMISSIONER COPPS: Mr. Bozell, you just
12 testified that we're in the midst of a tremendous
13 consolidation in the media and you almost never
14 advocate government intervention on something like
15 ownership. You see a problem here. And you said that
16 your 750,000 members believe that television and radio
17 and other media have taken a sharp turn for the worse
18 in recent years as extreme violence and trashy
19 programming has become more and more endemic, creating
20 risks for our children.

21 Do you believe that it's important that
22 the FCC take the issue of the declining quality of
23 media programming into account in this proceeding on
24 media ownership?

25 MR. BOZELL: Perhaps I would tell you that

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1 of the many different things I've observed in my
2 lifetime professionally, I have never in my life seen
3 a more passionate outpouring of concern from the
4 public than over this one issue.

5 COMMISSIONER COPPS: And do you believe
6 that the FCC has taken this subject seriously?

7 MR. BOZELL: I do not. When no one has
8 been fined on television for indecent programming,
9 I've got to conclude that the FCC doesn't believe
10 there's anything indecent on television. But I don't
11 think you would ever allow me to say right here in
12 this hearing some of the language that was used last
13 night on television to your children.

14 COMMISSIONER COPPS: Is there in your mind
15 a correlation between the rising tide of consolidation
16 and the rising tide of indecent programming even if we
17 don't know for sure yet if there's a causal link?

18 MR. BOZELL: I have to be very careful.
19 We have to be very careful. I think we do not want to
20 ascribe a blame where blame ought not to be going. I
21 do not believe there's a conspiracy going on here. I
22 do not believe there are bad people in these
23 corporations. However, the reality is that in the
24 last several years and every study we've done and it's
25 never been questioned shows that it is getting worse

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1 and worse and worse when it comes to programming and
2 you're seeing more and more and more consolidation.

3 COMMISSIONER COPPS: Do you think it would
4 be irresponsible for the FCC to decide to scrap or
5 significantly modify our concentration rules that
6 might lead to even more indecency without adequately
7 exploring this possible correlation?

8 MR. BOZELL: For the reasons I've given,
9 yes.

10 COMMISSIONER COPPS: You mentioned you
11 have 750,000 members who are extremely concerned with
12 violence and other forms of indecency in the media,
13 but that they do not even know that the FCC is making
14 this decision, correct?

15 MR. BOZELL: Absolutely.

16 COMMISSIONER COPPS: So it sounds like
17 this issue is not an inside the beltway issue, but
18 probably millions and millions of Americans are
19 concerned, but don't even know that they should make
20 their voice heard, right?

21 MR. BOZELL: Absolutely.

22 COMMISSIONER COPPS: So I guess before
23 we're through, we're going to have to add a few to our
24 18,000 comments if Americans really find out what's
25 going on here. Don't you agree?

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1 MR. BOZELL: I hope you will. I hope that
2 indecency and the Commission's role in that will
3 become more important than I believe it has been to
4 date.

5 COMMISSIONER COPPS: Thank you very much.

6 MR. KRATTENMAKER: Mr. Chairman, could I
7 just ask before we leave, because I think all of us
8 have so many questions. Is there a possibility that
9 we could submit some written questions. We don't want
10 to inundate our panelists, but just to flesh out the
11 record and then to ensure that these are part of the
12 record in the proceedings.

13 CHAIRMAN POWELL: Sure. In fact, I've got
14 a whole stack of questions from the audience too so
15 we'll figure out how to do that.

16 If you don't mind, I'd like to follow up a
17 little on Commissioner Copps and ask Ms. Riskin
18 whether she agrees with the responses to his questions
19 that Mr. Bozell provided?

20 MS. RISKIN: I'd like you to know that I
21 have black and blue marks on my head from pounding on
22 the network doors. I think many of our members feel
23 frustrated. They would like to do quality
24 programming, but find themselves in a situation where
25 in order to do work with the networks they have to

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cede complete control which means that if they want to do a story about a middle-aged person, take for example, a show called "The Comish." I don't know if you remember, it wasn't about FCC Commissioners, it was another kind of Commissioner.

CHAIRMAN POWELL: That's probably why it didn't work.

MS. RISKIN: Actually, it was quite a good show and the man who created the show insisted on a middle-aged sort of pork bellied lead character. The network demanded that it be a young, handsome Italian and in those days when this show was created, the creator of the show simply went to another network. He could shop his story somewhere else. That does not exist today.

I think that the urgency for ratings and bottom line has chased away a majority of good audience for quality programming in the marketplace.

We used to have a very rich marketplace for movies for television. If you remember "The Autobiography of Miss Jane Pittman" or "Roots." You don't see those programs today on the networks. They are being done in-house. They are expensive for a major corporation to make. They are not expensive, they are not problematic in terms of making money for

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1 a small company that's backed by somebody with a
2 passion to tell a story.

3 So we have chased out of the marketplace
4 people who are important story tellers with the kind
5 of quality programming that Brent Bozell would like to
6 see returned.

7 Just as an added note, one of the
8 executives at ABC was asked why the new series last
9 year, the majority of the pilots were developed by
10 their own in-house production. And the answer was
11 because they wanted all their programs to have the ABC
12 brand or stamp which means that all those shows would
13 be coming from one point of view. This is what's
14 damaging the diversity in the marketplace. Thank you.

15 CHAIRMAN POWELL: Thank you and we will
16 provide an opportunity for Mr. Ireland to respond, but
17 I think we should first see what Commissioner
18 Abernathy and Commissioner Martin wanted to follow up
19 on.

20 Thanks.

21 COMMISSIONER ABERNATHY: Thank you. I
22 still come back to the dilemma that I think as
23 government regulators we face which is there's been a
24 lot of concern expressed that the programming is
25 really rotten, there's not a lot of choice about it.

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1 Forget if we change the rules at all. It sounds like
2 this is a general comment about programming today as
3 we see it today.

4 And yet, you also tell me that five have
5 75 percent share of prime time viewing. So there are
6 all these alternative channels. There's the Discovery
7 Channel. There's Children's Channel. There's AMC.
8 There's Biography. There's History. And people
9 aren't watching it, apparently. Apparently 75 percent
10 are watching prime time viewing which then goes back
11 to do I tell them they can't watch this? Do I start
12 trying to force them into these other outlets? Which
13 are there, apparently, but it looks to me like most
14 people are choosing to watch the 75 percent prime time
15 viewing. So I'd like anyone to comment on that.

16 MR. KRATTENMAKER: Mr. Schwartzman?

17 MR. SCHWARTZMAN: Yes, Commissioner. Two
18 points on this. First, this is not just about
19 majority tastes. The market will take care of
20 majority tastes. The Commission's job as Congress has
21 reminded it in the case of children's television is
22 that where the market fails, the Commission can and
23 should and has the power and authority to direct
24 broadcasters to carry certain kinds of content that's
25 a viewpoint neutral content --

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1 COMMISSIONER ABERNATHY: Do you believe
2 the market is failing today? That's what I need to
3 know.

4 MR. SCHWARTZMAN: Absolutely.

5 COMMISSIONER ABERNATHY: So there's not
6 enough choices --

7 MR. SCHWARTZMAN: The market --

8 COMMISSIONER ABERNATHY: People can't turn
9 to history or to American Movie Classics or to PBS?

10 MR. SCHWARTZMAN: You buy circulation and
11 you buy viewers and when you have huge conglomerates
12 which are also the ones programming most channels, and
13 they are leveraging their incumbent status to drive
14 the other content, you don't get the development of
15 programming which serves these different additional
16 tastes and you lose the creative juice. You deplete
17 the creative gene pool by reducing the number of
18 channels for creative people to introduce their
19 programming. This is what happens with concentration
20 of control. You get concentration of taste.

21 COMMISSIONER ABERNATHY: So are you
22 discounting, then you must be discounting cable. Are
23 you just talking about free over-the-air?

24 MR. SCHWARTZMAN: No, no. Who owns the
25 cable channels?

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1 COMMISSIONER ABERNATHY: No, but what's on
2 the cable channels that people aren't watching.
3 That's where I keep -- they can turn the channel.

4 MR. SCHWARTZMAN: Some people are watching
5 it, but you've got the large companies using their
6 powers under the -- retransmission consent and so
7 forth, to drive viewers to their own content which
8 they're repurposing and the size of these companies
9 and their promotional capabilities make -- leave
10 viewers unaware of what else is there. This is buying
11 circulation --

12 COMMISSIONER ABERNATHY: So that's what
13 you'd -- okay. Now I get what you're saying. You're
14 saying it's the promotional capabilities so people
15 don't realize they have a choice.

16 MR. SCHWARTZMAN: Incumbents leverage
17 their power. That's the most important thing that I
18 would say.

19 The second point that I would -- well, I'm
20 taking too much time. Let me leave it at that.

21 COMMISSIONER ABERNATHY: Let me hear what
22 Bob's response would be.

23 MR. CORN-REVERE: Well, as usual, when I
24 hear Andy speak I feel we're on different planets.
25 It's just hard to imagine that people can talk about

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1 less choice and less diversity today than at any time
2 in our history. You can talk about the number of
3 owners all you want, but the fact is the average
4 viewer has a myriad of choices that never existed
5 before. And people don't have a hard time finding PBS
6 if they want to find it. And they don't have a hard
7 time finding Discovery Science or Biography or any of
8 the other channels, the History Channel. They can
9 find them and the question is whether they want to
10 find them.

11 But I think this whole colloquy that's
12 been going on underscores the danger of trying to use
13 structural rules to engage in social engineering.
14 There's a serious mismatch going on here because when
15 the Hollywood community talks about creative control
16 and wanting to put on quality programs, they're
17 talking about wanting to put on the very kinds of
18 programs that Mr. Bozell hates. For example, if you
19 look at the comments filed in this proceeding, they
20 talk about being blocked from being able to put on
21 shows like "Murphy Brown" and "Roseanne", shows that
22 Mr. Bozell in the past has criticized and I'm sure
23 would again if they reappeared.

24 The other difficulty is when you start
25 talking about using official pressure to change the

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1 kinds of programs that appear on television, then it's
2 hard to predict what's going to happen. If you go
3 back 10 or 12 years ago when "The Simpsons" first
4 appeared on Fox which, by the way, at the time was a
5 fledgling network and wasn't forcing anybody to watch
6 anything. "The Simpsons" appeared and was roundly
7 criticized as being vulgar and in poor taste.
8 President George Bush criticized it by saying that we
9 needed a nation closer to the Waltons than to the
10 Simpsons. I guess he didn't have quite the same
11 concern with bland TV.

12 Drug czar William Bennett engaged in a
13 similar public tirade against "The Simpsons". And Mr.
14 Bozell criticized it in a 1997 column saying that it
15 is "a dysfunctional family" and I believe the same
16 concern you had today about the Hollywood elites
17 forcing their views. You say always the approach is
18 the same. Forget the majority sentiment, aim to
19 capture the avant garde minority.

20 Well, I think if you come back now and
21 look at a program like "The Simpsons" it's clearly
22 stood the test of time. It's the longest running
23 sitcom in TV history. National Review recently called
24 it possibly the most intelligent, funny and
25 politically satisfying TV show ever. Broadcasting and

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1 Cable has editorialized in favor of giving it an Emmy
2 and not just as an animated series. And lately, and
3 perhaps surprisingly, religious writers have begun
4 praising "The Simpsons" for the amount of religious
5 content in the show including a recent book that's
6 come out on the subject. There are even websites
7 devoted to the religious references in "The Simpsons."

8 So I think once you start having public
9 officials put their thumb on the scale and try and
10 create structural rules to affect whether or not shows
11 like that are going to succeed or to game the process,
12 then I think you have a very serious problem.

13 MR. KRATTENMAKER: Commissioner Martin?

14 COMMISSIONER MARTIN: Mr. Bozell, you said
15 that you'd never seen an outpouring like this one on
16 this issue. Just help me understand. I was just
17 trying to -- is the issue that you're seeing the
18 outpouring on the decency or indecency of the
19 programming or is it on the ownership issues?

20 And I'm trying to understand what you're
21 actually seeing the outpouring of public comment on
22 and I'm still a little confused about the connection
23 between the two. And then I would hope that maybe Mr.
24 Corn-Revere could respond as well to your comments.

25 MR. BOZELL: I'd be happy to respond.

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1 First, let me, in fact, and correct Mr. Corn-Revere
2 and I would ask him not to quote out of context what I
3 have and haven't said. I've also praised "The
4 Simpsons" up and down for a thousand different reasons
5 as well. And we're not debating -- we could debate it
6 some other time, but please don't take my words out of
7 context.

8 On the question of what the public talks
9 about, I travel all over the country. Ladies and
10 gentlemen, you do the same thing. You talk to people.
11 You talk to your friends, you talk to your associates.
12 And on a daily basis, there isn't somebody who isn't
13 going to say to you did you see what was on television
14 last night? Did you see -- and I'm not going to name
15 any shows because it's unfair to pinpoint a show. But
16 did you see this show? Did you see that program? Did
17 you hear what he said on that awards program? Did you
18 hear the F word used last night during the family
19 hour? They're horrified that this is happening.
20 They're horrified that it's happening with increasing
21 frequency. And then they say what can I do? What can
22 one do about this?

23 We are the market. We are the public out
24 there. Look at the national surveys. Ninety-seven
25 percent of families in this country believe there's

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1 too much sex and violence on prime time television
2 coming into their living rooms, being broadcast to
3 their children. And then they turn and say what can I
4 do about it?

5 Well, they go to the networks. The
6 networks tell them go pound sand. They don't care.
7 They've got the longevity to withstand any little
8 complaint and they keep it up long enough and sooner
9 or later as Mr. Corn-Revere just said, people start
10 accepting it. And they just resign themselves that
11 that's the way it's going to be. And that's another
12 wall that's just come down. Another sensibility
13 that's been taken care of.

14 There's got to be a politics of shame, I
15 believe. Not just, by the way on the end stream. Not
16 just on the Commission, on the advertisers and on the
17 public as well. This is a very complicated issue, but
18 there's got to be standards. We've got to say to
19 ourselves, we can't put certain messages on license
20 plates. You can't do that. You can't use the N word
21 on a license plate and go down the road with it. You
22 will go to prison or something for that. You can't
23 put certain signs on billboards, but why can you put
24 it on television in front of my children and why is it
25 that it's indecent, uncivilized for me to use certain

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1 language in this hearing, but tonight on television it
2 will go to my children. And it's okay?

3 There's a problem.

4 COMMISSIONER MARTIN: I was wondering if
5 Mr. Corn-Revere -- just a comment about -- is the
6 problem the connection between, or whether there is a
7 connection between, indecency and the ownership
8 issues, which is really what is before the Commission.

9 MR. CORN-REVERE: Well, I understand the
10 concerns expressed about indecency, but I just don't
11 understand the connection you're trying to draw
12 between that and media concentration.

13 In fact, again, when you start talking
14 about the different views on this panel, you see very
15 divergent views. A while ago, Ms. Riskin referred to
16 the situation that Stephen J. Cannell had in trying to
17 solve "The Comish" and in the same article that
18 Cannell was writing about that situation, he described
19 another producer being turned down when he took "The
20 Sopranos" to network television and saying that the
21 networks just didn't get it and none of the networks
22 bought it and so in the end the producer was forced to
23 go to HBO and ultimately reform the shape of
24 television.

25 Now there are two points that I think that

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1 are important from that anecdote that comes from the
2 article in last week's Broadcasting and Cable by
3 Stephen J. Cannell. The first is that it doesn't see
4 like diversity has been harmed when the networks make
5 a mistake on whether or not to get a show and it turns
6 up someplace else.

7 And the second is I don't think "the
8 Sopranos" is what Mr. Bozell had in mind what he wants
9 to limit concentration so that we have more quality
10 television.

11 It has been one of those shows, it's been
12 a breakthrough show. It's been praised by many,
13 reviled by others because it is a hard edged show. It
14 is on cable and it's forcing the networks now to
15 compete, but again, I don't see the problem with
16 concentration. The problem, if there is one, is that
17 the networks are being forced to compete.

18 CHAIRMAN POWELL: Thank you. One of the
19 things I find interesting is even if I credit your
20 argument about indecency, and I think there's a fair
21 amount of it that's fair commentary about aspects of
22 television, I'm finding it a bit strange the
23 connection to the concentration because I suppose you
24 will be told that the clean era of the 1950s or 1960s
25 is when TV was of the quality that we preferred when

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1 there were three networks. So tying it to
2 concentration, there was never a time in history where
3 the media was more concentrated and the period where
4 TV was probably its cleanest. So I don't know that I
5 see the immediate merits of the suggestions that the
6 concentration levels of today are somehow responsible
7 for indecency.

8 I'd only also like to make probably just a
9 personal comment. I think TV right now produces some
10 of the worst ever and I also think it produces some of
11 the best ever. I think what's happened is TV has
12 dramatically increased in abundance. Yes, I do have a
13 lot of neighbors say did you see that terrible show
14 last night? I also have a lot that come in and say
15 did you see the Theodore Roosevelt special, it was
16 brilliant. I also had people come to see me and say
17 did you see Ken Burns' Civil War special? It was
18 brilliant.

19 Every afternoon after Wednesday, my office
20 comes in and says did you see "West Wing" last night?
21 Wasn't that amazing? Or Fox's "24" or I think one of
22 the challenges we all are going to have with citizens
23 as the media continues to explode you're going to have
24 a wider range of diversities in the marketplace from
25 the most shameless to the greatest.

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1 But this connection to concentration, I
2 find, to be almost fabricated.

3 MR. KRATTENMAKER: Mr. Chairman, can I
4 treat that as a comment? I think I might do that.
5 We've already cut deeply into the public comment time
6 and I would like to get to that. I'm going to cut
7 into it a little bit more by saying that with all the
8 cards I've gotten, there's a series of questions that
9 aren't being asked here yet that I'd at least like to
10 pose briefly, particularly to Ms. Thompson and to Mr.
11 Liggins. I don't know whether Mr. Ireland would like
12 to comment on it and it is summarizing two or three of
13 these.

14 So far we've been talking almost
15 exclusively about television, what about radio? And
16 perhaps a little bit more specifically what is
17 reminded of the old joke that there are three kinds of
18 lies, lies, damn lies and statistics, but are there
19 certain kinds of ways that the Commission may have of
20 knowing how it is that increased diversity of
21 ownership can lead to diversity of public service
22 activity and diversity of programming?

23 It seemed like Mr. Liggins had, you may
24 want to say you've already addressed that, but I don't
25 know whether you want to follow up with that a little

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1 bit or Ms. Thompson?

2 MR. LIGGINS: I'd certainly like to
3 comment. At least from our perspective, we've been
4 the consolidated of African-American oriented formats
5 and so as we've gone in and bought more radio
6 stations, competition is what drives the different
7 voices of the different options in programming. One,
8 you don't want to compete with yourself, so why would
9 you launch a comparable product? You launch something
10 different. NBC has launched Telemundo. In Atlanta,
11 Georgia, we have a gospel FM station. That's --
12 gospel has typically been relegated to the AM band for
13 the last 50 years and in Atlanta on a very expensive
14 station that we paid a lot of money for, we took a
15 shot and you know what? It was very successful. It's
16 the third highest rated radio station in that market.

17 We have a jazz station. We have a hip hop
18 station. And we also have an R & B oldies station.
19 So ironically enough, when we first went into the
20 market, our first station was hip hop oriented and we
21 got some barbs for that because hip hop music can at
22 times be seen as aggressive. But the same company,
23 Radio One, also has a station, a gospel station that
24 is being praised. So the nature of competition, I
25 think, forces the diversity in format options.

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1 I also think the range and the spectrum of
2 some of the best television programming and some of
3 the worst that you've seen, that's what competition
4 also does. It forces people to take chances, whether
5 a television broadcaster or a radio broadcaster,
6 because you are fighting for the attention and the
7 ratings and the votes from the public. So you have to
8 take more shots in order to be successful.

9 And consolidation, I was against
10 consolidation prior to the 1996 act. I lobbied
11 against it, but when I saw that it was going to go the
12 direction that we and NABOB had wanted, we decided
13 that we needed to get in the game and to compete. And
14 it cost money in order to deliver "The Simpsons" and
15 it cost money in order to even deliver this gospel
16 radio station that I told you about.

17 So there is a necessariness to scale in
18 order to deliver quality programming that I think
19 needs to be underscored here.

20 MR. KRATTENMAKER: Thank you. Ms.
21 Thompson, did you wish to comment.

22 MS. THOMPSON: Well, you can certainly
23 sense the kind of pride when Mr. Liggins talks about
24 his company and the products that he provides to his
25 community and you can certainly also see that every

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1 product that he is outlining specifically targets the
2 segment of the community that he is serving and that's
3 exactly my point. I think minority-owned broadcasters
4 know how to serve their communities. And if we don't
5 provide support to those minority broadcasters, they
6 would not be able to continue in business, especially
7 with the issues of carriage. Distribution is the key
8 for us.

9 MR. KRATTENMAKER: Thank you. I think the
10 Commissioners should vote with their feet. We have a
11 number of people lined up to make public comments.

12 CHAIRMAN POWELL: We'll continue this
13 until 12:30 and we'll take a 30 minute lunch break.
14 We'll be back here at 1, but we have at least 20 some
15 odd minutes left to hear from the public. And also
16 some of the cards that you have, Tom.

17 Why don't we start with that process and
18 we'll go left and right, and Tom, please interject
19 with the questions that you have on the cards as we go
20 forward.

21 MR. KRATTENMAKER: Do we have a time
22 limit?

23 CHAIRMAN POWELL: 12:30 we're wrapping up.

24 MR. KRATTENMAKER: No, for each
25 individual.

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1 CHAIRMAN POWELL: If we can keep it down
2 to three minutes, that would be great. If you can
3 state your name and where you come from and who you
4 represent.

5 MR. KRATTENMAKER: When the red light
6 comes on, please stop simply because we want to try to
7 get everybody through. Sorry.

8 Sir?

9 UNIDENTIFIED SPEAKER: Thank you for
10 taking time for those of the public outside the
11 beltway that aren't being paid here today because I
12 think those are the representations that you really
13 are looking for because character of community is so
14 important. And to have given a few communities the
15 power of a light bulb in a low power FM station to do
16 truly community programming by the community, for the
17 community, to have gospel programs that originate in
18 the community, to have working watermen that are -- my
19 waterfront community to have shows is most, most
20 important, to have the storytelling that comes out of
21 your community. This is community programming.

22 I'm offended by the President of NBC to
23 say that he can do community programming for our
24 community. Shame on the National Public Radio for
25 trying to keep my community from having a station, the

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1 power of a light bulb that is only meant to have the
2 power to reach half the people half the time.

3 How about all the people all the time?
4 And let's give other communities a frequency. How
5 come corporations have all the frequencies and there's
6 no frequencies left for the communities?

7 I would say the FCC has abdicated their
8 job in that respect.

9 Thank you.

10 MR. KRATTENMAKER: Thank you for your
11 comment.

12 (Applause.)

13 Every once in a while the moderator gets
14 to step outside and I would say that it is interesting
15 that, of course, sometimes you can deal with ownership
16 issues by creating more things for people to own. As
17 I indicated, so I sort of associate myself not
18 necessarily with the conclusion, but the point of view
19 spectrum management may be an issue here as well as
20 competition, localism and diversity. Let me shut up.

21 Yes ma'am.?

22 MS. HALLICK (Phonetic): My name is DeeDee
23 Hallick and I'm a co-author of a book which I
24 recommend to the panel called Public Broadcasting and
25 the Public Interest which just came out. It's M.E.

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1 Sharp are the publishers.

2 I am also a former professor of
3 communication at the University of California, San
4 Diego, where I taught for 17 years and also the past
5 president of the Association of Independent Video and
6 Film Makers which is in New York City and has
7 membership of over 6,000 independent video and film
8 makers.

9 I would just like to right now address the
10 problem of getting independent documentaries on any
11 kind of public or commercial television in the United
12 States if your name isn't Ken Burns. With due respect
13 to his work on the Civil War series, 17 percent of the
14 public television prime time is Ken Burns, but where
15 are the voices for everyone else?

16 There are many, many independent producers
17 who do work, who want to work in documentaries and who
18 cannot -- or are completely locked out of the
19 commercial and the public television system; even
20 people who are as popular as for example, Michael
21 Moore, whose recent documentary has just broken all
22 kinds of box office records. He has struggled to keep
23 a very tiny toehold occasionally on any kind of
24 television and right now he is completely locked out
25 from that.

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1 I refer to my colleague Lee Lu Lee who is
2 also on the Board of Directors of the AIVF, the
3 Association of Independent Video and Film Makers.
4 He's half Chinese and half African-American. A number
5 of years ago he did a documentary on the history of
6 the Black Panthers in the United States. It was a
7 work he worked on for seven years, had incredible
8 archival footage, was a very in-depth look at the
9 Panthers and often quite critical of the leadership.
10 His program was shown on 37 national systems around
11 the world in Japan, in Holland, in England, in many,
12 many -- Brazil even. And his program could not get on
13 one channel in the United States, not one.

14 Finally, Black Entertainment Network did
15 put it on two and a half years after he had finished
16 making it. Where was the place for people to put on
17 these kinds of programming? If you talk about the
18 History Channel, you should ask Gore Vidal about his
19 history with working with the History Channel. Here
20 is an eminent intellectual, very important -- he was
21 originally hired by them. He completely was disgusted
22 with the way they wanted to portray history.

23 Look at Howard Zen. A number of people
24 had put together a history series with him. He cannot
25 get on anywhere. The History Channel turned it down.

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1 MR. KRATTENMAKER: Thank you. Sir?

2 (Applause.)

3 MR. MOBLEY: Thank you. My name is Arthur
4 Mobley and I am a broadcaster and entrepreneur and
5 have been for a number of years. I have been involved
6 also in the advocacy side. I worked for many years
7 with the National Black Media Coalition and was a
8 Western Regional Director for a number of years.
9 Years ago, back when people like Mo Udall were
10 complaining that the combined communications and the
11 Gannett merger were tantamount to a whale swallowing a
12 whale.

13 I think -- and we've come a long way since
14 then. We've had a lot of whales and sharks and
15 piranhas and all kinds of things developed since then.
16 But I think that the missing link in what seems to be
17 a problem with the Commission, with all due respect,
18 is that we're not following the money. There's a
19 money trail, very seriously, and what you've done and
20 what you've reregulated over the last 10 years or so
21 and the change that you've made have not encompassed
22 following the money. You've dealt with the regulation
23 and you've -- how many stations are here and there,
24 but who benefits and how they benefit, how they make
25 money has been left to the FTC and the SEC and other

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1 regulatory agencies and perhaps they should be here.

2 Also, and you should have maybe some joint
3 discussions about this since they all are effective
4 and have effect on the interest of all of the people
5 here. But as a broadcaster, I mean it's a simple
6 business situation. You give me an open -- a carte
7 blanche to own as many of any kind of businesses as I
8 want. What I'm going to do is I'm going to buy up as
9 much as I can and then I am going to start minimizing
10 my output of cash. I'm going to become less effective
11 at serving local needs. I'm going to be less
12 effective at getting all of those concerns and
13 interests and those outlets taken care of and I'm
14 going to be making as much money as I can. So I'm
15 going to put a little sawdust in the hamburgers, you
16 know? I'm going to put some junk out there. That's
17 the nature of business in this country and
18 broadcasting is no different.

19 People are putting out junk because they
20 have too much opportunity to own too much and you
21 should not be talking about keeping the standards.
22 You should be talking about cutting them back. These
23 standards need to be rolled back. Some of these big
24 corporations need to get off some of these federal
25 licenses because these licenses again are the property

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1 ultimately of the public. They are the people's
2 airways and the Commission seems to have forgotten
3 that or misplaced it somewhere, but please find it and
4 if you have any doubts about where you're going,
5 follow the money.

6 Study a little bit more about how people
7 make money in these big companies and why we have so
8 many attorneys and no one of any content or substance
9 to come and talk to you other than sending their
10 attorneys out.

11 (Applause.)

12 MR. KRATTENMAKER: Thank you. Yes ma'am.
13 The woman at the microphone.

14 MS. CRUMMILLER (Phonetic): My name is
15 Jenny Crummiller. I'm a member of a group from New
16 Jersey, the Antiwar Video Fund. We produced a
17 30-second TV ad and raised money to broadcast it. We
18 contracted with Comcast Corporation to show the ad in
19 Washington, D.C. Comcast is the only cable provider
20 for Washington. Comcast put us in the schedule so our
21 ad would be shown twice during prime time hours for
22 three days in a row beginning the night of the
23 President's State of the Union Address when he was
24 expected to make his case for invading Iraq.

25 However, at the last minute, Comcast

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1 pulled our ad, supposedly because it was
2 unsubstantiated. Obviously, the charge was totally
3 arbitrary. Our ad is a montage of ordinary Americans
4 making statements against war.

5 Regardless of whether this was intended to
6 prevent our powerful message from undermining the
7 President's speech, that is what Comcast did, since we
8 had no time to find other ad time.

9 Whether by government or by corporation,
10 centralized control of the media is un-American. When
11 this happened, I felt like I was in Iraq. The ease
12 and nonchalance with which Comcast pulled our ad makes
13 clear this was not an isolated occurrence. Channel
14 choice did nothing to give us a choice.

15 In terms of control over content, in terms
16 of democracy, one corporation is one choice.

17 (Applause.)

18 MR. KRATTENMAKER: Thank you. Yes sir,
19 the gentleman at the microphone.

20 MR. SPRUILL: My name is Lonell Spruill.
21 I live within the 7th District of the House of
22 Delegates. That's a part of Chesapeake and Suffolk,
23 Virginia. I'm worried about the change in the FCC
24 media ownership rules that would allow the newspaper,
25 television, radio station to combine even more. As an

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1 elected official I can tell you how important this is
2 to me.

3 There's not enough important about what's
4 happening in our state. If my constituents don't know
5 what's going on, they won't communicate their views to
6 me. If the press only reports one side of the story,
7 how can they reach their own judgment and make
8 important decisions?

9 I'm so concerned, particularly about the
10 issues pertaining to minority race. When it comes to
11 minority race, the press does a poor job when it comes
12 to that.

13 If we allow the media to combine even
14 more, we will have fewer reporters and even fewer
15 coverage on TV. It's most important that we don't let
16 this happen.

17 As you know, in my area, home district in
18 Chesapeake and Tidewater area, in 1996, we had 21
19 different owners of radio stations. Now it has
20 dropped down to 15. That's 20 percent. We have only
21 three TV stations, local stations. I'm also worried
22 about the impact of media concentration on
23 advertising. That competition means air prices will
24 go up. Also, it means it would be more difficult for
25 groups to get heard through paid advertising.

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1 As the lady spoke earlier, last month,
2 Comcast refused to air an ad opposed to the war in
3 Iraq on a Washington, D.C. cable station after the
4 State of the Union message. Since cable is a monopoly
5 now, yet it was not heard. Guess what? I did not get
6 aired.

7 As a former member of Bell Atlantic, I
8 never lobbied. I am a lawyer member of the
9 Communication Workers of America and labor disputes,
10 labor often relies heavily on paid advertisement to
11 get their message across. So if we allow this thing
12 to be one sided can you imagine how it is now so far,
13 the way thing are happening on unions? It's important
14 that we let this thing stay open. Please, don't
15 narrow it down any further. Thank you very much.

16 (Applause.)

17 MR. KRATTENMAKER: Thank you. The only
18 way we're going to have an opportunity to try to hear
19 everybody is we change it to a two-minute limit. I'm
20 sorry, but that's what we're going to have to do.

21 Please.

22 MR. PRESTON: My name is Dan Preston. I'm
23 a co-founder of the Anti-War Video Fund and I just
24 want to give you an update on some of our experiences
25 after Comcast censored our ad. To reach the D.C.

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1 audience, we did have an alternative, not on cable,
2 but over broadcast. We approached all the network
3 affiliates with our ad. NBC rejected it on grounds
4 they would not specify. ABC never responded. We did
5 get the ad accepted by the CBS affiliate and paid a
6 lot more money to get it broadcast over the air than
7 it would have cost on cable.

8 Now the insidious thing about censorship
9 is this. You and the audience don't know what you're
10 not seeing. You don't hear the voices that have been
11 silenced. If fewer and fewer people own the
12 microphones, the diversity of voices in our democracy
13 will be strangled.

14 Now our story did get heard because it did
15 receive substantial national and international press
16 coverage on PBS, NPR, Canadian, French and Arabic TV,
17 in print, on alternative and trade press, a few local
18 newspapers, but for the most part not on the media
19 properties owned by the major media conglomerates.

20 Now in particular, this one story, on the
21 day of the State of the Union before all this stuff
22 hit the fan, a local Comcast news program prepared a
23 story on our group, a nice peaceful Princeton group
24 and it was going to air it on the Channel 8, the local
25 Comcast news program. But when they heard that their

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1 parent company had censored our ad down in Washington,
2 and the controversy then was arising about us, they
3 canceled the story about us. And as they candidly
4 admitted, not because they didn't think it was a good
5 story, they wanted to run the story, but guess what?
6 They told us they wanted to have jobs the next
7 morning. So the censorship is here. It's real. It's
8 not an unsubstantiated claim. It's happened to us.
9 It will happen and it will happen more and more as the
10 media gets more and more concentrated. Thank you.

11 (Applause.)

12 MR. KRATTENMAKER: Thank you. Yes sir.

13 MR. LONG: Hi, my name is Nathan Long. I
14 teach at Virginia Union University, a local
15 historically black college here in town and I'm very
16 happy to come after the delegate who just spoke
17 because when we talk about the public airwaves, I
18 really think we're talking about the public, we're not
19 just talking about individuals, but we're specifically
20 talking about citizens. And citizens, in order to be
21 active in a democratic government, really need to have
22 information and as media critic Robert McChesney says,
23 the role of our newspapers and of our journalists are
24 not to entertain us, not to give us what we want, but
25 what we need.

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1 And more and more as corporations own the
2 major ways of providing news, no matter how many news
3 stations or how many newscasts there are, there are
4 fewer and fewer political options and opinions in the
5 news. If you look at the newspapers a hundred years
6 ago, they were mostly owned by small local owners and
7 had very staid positions. Now the majority of news is
8 considered objective which of course means that it
9 takes a very middle of the road politics. I think
10 this is a real problem.

11 The other issue that I just want to bring
12 up is if we hear corporations saying they are going to
13 represent diversity and then you hear citizens saying
14 no, they're not, I ask you seriously think which one
15 is the person to listen to?

16 (Applause.)

17 And what are the motivations of
18 corporations? Newspapers used to be owned because
19 people wanted to say something. Now they're owned to
20 make money. And that's going to effect what gets put
21 out and what doesn't.

22 Thank you.

23 (Applause.)

24 MR. KRATTENMAKER: Thank you.

25 MS. KEKUS (Phonetic): My name is

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1 Christina Kekus and I'm a senior consumer studies
2 major at Virginia Tech. Today, I'm delivering a
3 statement to you on behalf of my advisor, Dr. Irene
4 Leach who is the president of the Virginia Citizens
5 Consumer Council, a Virginia statewide consumer
6 education advocacy organization.

7 The Virginia Citizens Consumer Council is
8 very concerned about the changes that you have
9 proposed. We believe that removal of the restrictions
10 on media ownership will have a very negative effect on
11 society. Given the problems that exist even with the
12 restrictions, consumers will be badly harmed if they
13 are removed.

14 It is already difficult to get the media
15 to address consumer concerns, especially when they are
16 complex and big companies have different perspectives
17 from consumers.

18 For example, Virginia has been involved in
19 restructuring its electricity markets for over five
20 years. During that time there has been very limited
21 media coverage. In one media market neither a
22 concerned local legislator, nor myself, were
23 successful getting coverage as the critical decisions
24 were made. They were told that the issue was too
25 complex for people to understand.

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1 Recently, in another market, I had an op
2 ed turned down but was told that a 100 to 200 word
3 letter to the editor might be printed. However, it
4 was not printed, even though it supported the
5 editorial view of the newspaper. Several weeks later,
6 a letter from someone else was printed on the topic.
7 In the meantime, other issues were rehashed
8 repeatedly, but electric issues never appeared as a
9 matter to citizens, only to the editors.

10 If one entity is allowed to own multiple
11 media outlets in the same market, it will be far too
12 easy for that entity to totally control the public
13 discourse. Citizens will hear one perspective
14 regardless of whether they read the paper, listen to
15 the radio or watch television. Many voices and
16 perspectives will be lost. Many decisions will be
17 made based on incomplete or incorrect information.
18 Recent consolidation at radio stations has meant a
19 loss of local news and weather reporting. For
20 example, Clear Channel station's news all comes from
21 Texas and my experience has been that there is little
22 news.

23 This week, as I drove across Virginia in a
24 snowstorm and wondered --

25 MR. KRATTENMAKER: Thank you very much,

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1 ma'am. You can submit that for the record.

2 MR. KRATTENMAKER: I'd like to thank
3 everybody very much. One thing I learned when I was
4 dean of a law school is you don't keep the faculty
5 from eating lunch. I'm not going to keep the
6 Commissioners from eating lunch.

7 Those of you who are standing in line, if
8 you'll come up to Mr. Snowden, he'll get your name and
9 guarantee you first spot the next open mike.

10 I'm sorry, we're just way over the time
11 limit.

12 I would like to thank the panel very much
13 and the open mike people very much. You went to a lot
14 of trouble to come here. I must say, I must apologize
15 to Mr. Ireland, I should have had him on as a
16 responder. I didn't get to you and I'm sorry for
17 that.

18 I apologize to everybody who hasn't had a
19 chance to speak yet. Please come back after lunch. I
20 expect that you will.

21 Thank you.

22 (Whereupon, at 12:30 p.m., the hearing was
23 recessed, to reconvene at 1:30 p.m.)

24

25 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

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1:30 P.M.

MR. KRATTENMAKER: Welcome back. This is our panel on competition issues. People have asked that I begin with a half hour summary of some of the more interesting aspects of my life before I got to high school, but I've decided to pass that over.

A reminder that the rules under which we're operating are a five minute time limit for each of the panelists, strictly enforced, not because you're not important but simply on the grounds that everybody here is important and that we want to hear from everybody.

And are the Commissioners here? We're ready, Mr. Chairman?

CHAIRMAN POWELL: We're ready.

MR. KRATTENMAKER: Okay, Mr. Croteau?

MR. CROTEAU: Good afternoon. My name is David Croteau. I am a professor in the Department of Sociology and Anthropology right here in Richmond, Virginia. I think I'm the token local panelist today, I believe.

Good afternoon. I appreciate the invitation to comment at today's hearings. I believe local hearings such as this serve an important role. I certainly hope the FCC will sponsor more public

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1 hearings throughout the country in the coming weeks
2 that will include more local voices and more time for
3 the public to take part.

4 The media serve a unique role in
5 democracies that value free and creative expression,
6 independent thought and diverse perspectives. In
7 recognition of this unique, public interest role, the
8 free press is the only business explicitly protected
9 in the U.S. Constitution.

10 We cannot, therefore, treat the media like
11 any other industry. It's products are not widgets or
12 toasters. They are culture, information, ideas and
13 viewpoints. Consequently, we must be especially
14 vigilant in protecting and preserving the public
15 interest as it relates to this vitally important
16 industry.

17 Unfortunately, relaxation or elimination
18 of existing ownership regulations would move us in
19 exactly the wrong direction. While increasing the
20 profits of major media conglomerates such changes
21 would, in all likelihood, promote further
22 concentration of media ownership, thereby undermining
23 competition, reduce the already limited diversity in
24 commercial media content, and reduce the quality and
25 sometimes the quantity of locally produced media

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1 content.

2 None of these are good for our country or
3 for our democracy.

4 We don't need to speculate about the
5 likely impact of deregulation on ownership
6 concentration. We need only look at past experience.

7 The removal of the national cap on radio
8 ownership in 1996 resulted in the dramatic
9 concentration of ownership in that industry. In six
10 years, the number of radio stations increased over 5
11 percent, but the number of radio owners decreased by
12 more than one third. A single corporation, Clear
13 Channel Communications, went from owning 40 stations
14 before the rule changes to owning over 1,200 stations
15 today, five times as many as its nearest competitor.

16 Here, in Richmond, this translated into
17 Clear Channel owning six local stations, resulting in
18 a loss of competition and the loss of local content in
19 favor of homogenized national programming. For
20 example, WRVA, a Richmond institution, long known for
21 its emphasis on local news and talk, was gutted after
22 the Clear Channel takeover. Nearly every on-air
23 personality was fired or resigned and public outcry
24 filled local newspaper columns.

25 As one columnist put it, "in its embrace

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1 of nationally syndicated personalities to the
2 exclusion of locals, Clear Channel has made it clear
3 that it has no use for this community's talents,
4 viewpoints and flavor."

5 In short, the deregulation of radio
6 ownership has been a disaster for Richmond and many
7 other communities across the country. This experience
8 should be a cautionary tale in considering any future
9 rule changes.

10 There is other empirical evidence which I
11 will skip in the interest of time here today, but
12 despite such evidence, the call to ease regulations
13 continues to come from the corporations who would
14 profit from such changes. These calls are often
15 justified on the grounds that technology has changed
16 our media landscape and therefore has made ownership
17 regulations obsolete. This claim is not new. Every
18 time new media technology has been introduced, whether
19 it is radio, television, cable or the internet,
20 enthusiasts have told us that everything has changed.
21 But in fact, in each case, the fundamental questions
22 about new media technologies have remained the same,
23 including who will own and control them, what purpose
24 will they serve, whose views and visions will be
25 represented in the new medium?

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1 Technological changes in the media
2 industry have not reduced the importance of regulation
3 and the public interest. While the expansion of cable
4 and the rise of the internet have produced more
5 outlets, not much has changed in terms of who owned
6 and controls these outlets, as we've heard earlier
7 today.

8 New media outlets often do not mean new
9 media content either. Instead, broadcast TV programs
10 are recycled for cable channels. Newspaper and cable
11 news content is repackaged for the internet and so on.
12 Thus, despite changing technologies, what we still
13 need are multiple, competing, diverse and independent
14 sources of information and entertainment.

15 MR. KRATTENMAKER: Sir, your time is up,
16 are you summarizing now?

17 MR. CROTEAU: Yes, yes. Some of which by
18 the way need to be noncommercial, such as in low power
19 radio.

20 MR. KRATTENMAKER: Thank you. Ms. Foley?

21 MS. FOLEY: Good afternoon, I'm Linda
22 Foley, President of the Newspaper Guild Communications
23 Workers of America. Thank you for allowing me to
24 testify on behalf of the Newspaper Guild, CWA, the
25 union that represents print journalists and their

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parent union, CWA, representing 700,000 workers including broadcast technicians and other media professionals.

Before my tenure with the Newspaper Guild, CWA, I was a reporter with the Knight Ridder Newspaper in Kentucky, so I'm going to talk about the competition for news.

The Commission's broadcast ownership rules are based on the first amendment principle that the widest possible dissemination of information from diverse and antagonistic sources is essential to public welfare.

First, we acknowledge that the media market is changing. No one knows this better than our members. There are more media outlets today than ever before, but there are fewer owners. And the fact remains that broadcast television and newspapers are probably far and away the dominant sources for local news and information.

The Newspaper Association of America reports that more than half the adult population reads a daily paper. Indeed, the Nielsen Study commissioned for this rulemaking shows that 63 percent of those surveyed identified newspapers as their source for local news and information. At the same time, Nielsen

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1 also showed that 85 percent rely on broadcast
2 television for local news. Compare that to one third
3 for radio and only 19 percent for the internet and
4 remember, half of America still doesn't have internet
5 access at home.

6 The dominance of TV news and newspapers
7 and local news and information sources is all the more
8 striking because, as the FCC's Waldfogel Study clearly
9 indicates, consumers of news and information do not
10 substitute sources, but rather use other media outlets
11 to complement their primary source of news and
12 information. Therefore, local ownership combinations
13 that allow unfettered mergers of news operations of
14 local broadcasters and daily newspapers, reduce the
15 number of antagonistic news sources available to local
16 citizens.

17 Local television and newspaper media
18 markets are already highly concentrated. Most cities
19 are one newspaper towns. While cable has increased
20 the number of outlets, in most cities the top four
21 over-the-air television stations still maintain more
22 than 75 percent of the market share.

23 Simply increasing the number of outlets in
24 a market does little to produce more antagonistic
25 sources.

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1 The networks submitted a study that shows
2 that of all 210 TV markets in the U.S., 70 percent
3 have four or fewer stations carrying original, local
4 news programming and 89 percent have five or fewer.
5 Only 19 markets have local cable news shows and some,
6 such as News Channel 8 in Washington, D.C. are owned
7 by a local broadcaster.

8 Focussing on outlets, without considering
9 market share and ownership, has led proponents of
10 local market combinations to draw some interesting
11 comparisons. For example, the network's brief
12 includes an in-depth analysis of the Milwaukee market.
13 It gives equal weight to the website of the local
14 hurling club and the Milwaukee Journal Sentinel. Now
15 let's face it. It's highly doubtful the Milwaukee
16 Journal Sentinel will ever be scooped by the local
17 hurling society.

18 When it comes to setting the local news
19 agenda and local viewpoint diversity, diverse
20 ownership, not the number of outlets is what matters.
21 The brief filed by the CWA in this proceeding contains
22 numerous examples that illustrate the point. One
23 example, however, provides a striking demonstration
24 about how concentration of media ownership can destroy
25 localism, competition and diversity of viewpoints.

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1 In 2001, Canada's second largest
2 commercial broadcast chain purchased Canada's largest
3 newspaper chain and now controls 30 percent of the
4 nation's daily newspaper circulation. Within months
5 of that merger, Canada West Global reversed journalist
6 tradition of local editorial independence by mandating
7 that its largest newspapers and all its broadcast news
8 operations adhere to editorial viewpoints dictated by
9 its headquarters in Winnipeg. It wasn't too long
10 before news stories were being edited and spun to
11 conform to the editorial viewpoints.

12 The FCC should not allow mergers in
13 markets that are already highly concentrated and if
14 mergers are permitted, the Commission should ensure
15 that the combination is in the public interest and
16 that antagonistic sources of news and information are
17 preserved.

18 CWA has proposed one way to do that, by
19 requiring commonly owned media including duopolies to
20 maintain separate newsroom and editorial staffs in
21 order to preserve and promote diversity viewpoint.

22 This language is modeled after the
23 Newspaper Preservation Act passed by Congress in 1970
24 that allows common ownership and joint operation of
25 business functions, but requires separate news and

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1 editorial staff. Our journalist members have worked
2 under these arrangements for decades. They report
3 that maintaining separate news operations does, in
4 fact, foster competition among reporters for local
5 scoops and varying news angles on local events.

6 Working reporters are employees of complex
7 organizations and they work under what we call the
8 invisible hand of the newsroom social control. Like
9 athletes, journalists perform their best when they are
10 challenged by competition and encouraged to do their
11 own personal best. It is imperative therefore that
12 the Commission adopt rules that protect the media from
13 consolidation into fewer hands, an outcome that would
14 do serious harm to the free flow of ideas that is so
15 essential to civic participation in our democracy.

16 Thank you very much.

17 MR. KRATTENMAKER: Thank you. Mr. Miller?

18 MR. MILLER: I'm Victor Miller of
19 Broadcast Equity and also for Bear Stearns. I've
20 covered the industry for 15 years in lending an
21 analytic capacity. Today, I'll discuss seven
22 operating pressures facing broadcast networks and
23 local stations as a context for my deregulatory
24 stance.

25 First pressure is audience fragmentation

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1 and declining ad share. The national TV marketplace
2 consists of 10 broadcast networks, 1400 commercial TV
3 stations, 287 national and 56 regional cable networks.
4 In 2001, the typical local household had 82 channels
5 available versus 10 in 1980. This robust and
6 option-filled marketplace accelerated by deregulatory
7 changes made by Congress and the FCC has been good for
8 consumers. However, robust competition has impacted
9 TV industry economics. ABC, CBS, NBC networks have
10 seen prime time viewing shares drop to 38 percent this
11 year from 90 percent in 1980. Local TV stations share
12 of media ad dollars has fallen to 15.5 percent last
13 year, versus 18.3 percent in 1980 despite almost a
14 doubling of the number of stations.

15 The second pressure is escalating
16 programming costs. Even in the throes of declining
17 ratings, the cost of network programming has increased
18 by 30 percent for half hour sitcoms and by 50 percent
19 plus for one hour dramas despite networks' increasing
20 ownership stake in these shows after financial
21 syndication rules were struck down in 1994.
22 Escalation of some sports rights have priced sports
23 off broadcast TV all together. Local ABC, CBS and NBC
24 stations in turn on the local level are investing more
25 heavily in local news spending \$1.5 billion in the top

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1 hundred markets on programming that most differentiate
2 stations from other media.

3 The third pressure is high operating
4 leverage. Recent financial results reported by
5 broadcast TV players suggest that there are few
6 operating efficiencies left in the business. High
7 operating leverage means that the broadcast TV
8 business is exposed to significant cash flow swings
9 with changes in advertising. In 2000, local TV
10 station industry revenues fell by 15 percent, but cash
11 flow plummeted by 25 to 35 percent. The broadcast TV
12 business was not well insulated from short term or
13 long term declines in the business.

14 The fourth pressure is a consolidating
15 cable business. Consolidation of the cable industry
16 may be broadcast TV's greatest threat. In 2002, the
17 top five MSOs controlled 72 percent of the nation's 74
18 million cable households and in 15 of the top 25 media
19 markets, one MSO controls at least 75 percent of the
20 local markets wireline subscriber base. Increasing
21 MSO concentration will make it more difficult for
22 local TV broadcasters to have meaningful
23 retransmission consent discussions. MSO concentration
24 creates competition for TV stations' local ad dollars
25 and programming franchise as well. We estimate one

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1 MSO captures \$1 billion in local cable advertising,
2 surpassing that earned by the ABC owned and operated
3 TV group. And perversely, 2002's appeals court ruling
4 would allow an MSO to buy a local TV station or local
5 TV and newspaper player is often restricted from these
6 moves by current ownership rules. This anomaly alone
7 begs for significant relief.

8 The fifth pressure is new technology.
9 Early adoption of personal video recorders suggests
10 that users skip ads at a 75 percent clip five times at
11 the level of the previous technology VCRs.
12 Advertising is free over the air TV broadcasting's
13 sole revenue stream. If the ad only model breaks
14 down, monthly subscriber fees would have to increase
15 by \$39 per month to replace broadcast TV's lost ad
16 revenue.

17 The sixth pressure is the lack of return
18 on investment in digital TV. We estimate that local
19 broadcasters will spend \$4 to \$6 billion rolling out
20 digital TV with little obvious return available to
21 that invested capital.

22 The seventh pressure is poor broadcast
23 network economics. Broadcast networks are not very
24 profitable. From 2000 to 2002, we believe the big
25 four networks generated only \$2 billion in profits on

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1 approximately \$39 billion in revenue, a 5 percent
2 margin. Without the most profitable network, margins
3 fell to 1 percent.

4 My conclusion is if these seven operating
5 pressures continue unabated and no deregulatory relief
6 is afforded the industry, the viability of free over-
7 the-air TV in the median term could be threatened.

8 Deregulation for networks -- I would say
9 that in order to preserve the long term viability of
10 the broadcast networks, we believe the FCC should
11 relax the national station ownership rule to 50
12 percent.

13 In the past, the networks have relied on
14 launching cable networks and syndication to prove
15 their overall TV economics. We believe these options
16 will prove less valuable now, given the oversupply of
17 cable inventory and static demand for syndicated
18 product.

19 For the stations, in order to preserve the
20 long term competitive viability of the local stations,
21 we believe the FCC should substantially relax or
22 eliminate newspaper broadcast cross ownership rules,
23 given newspapers declining circulation, declining ad
24 share and 28 year run without deregulation. A
25 newspaper broadcast combination also has potential

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1 local and public service benefits as well.

2 Also, we believe the substantial relaxing
3 of duopoly rules by extending this option to smaller
4 TV markets who are operating in deficiencies is really
5 needed. We support a rule that focuses on cumulative
6 local audience shares such as NAB's 10-10 proposal,
7 First Argyle's 30 percent local audience share
8 proposal and triopolies in large markets.

9 On radio, we advocate the retention of the
10 FCC's current radio market definition which was in
11 place when Congress modified the local radio limits in
12 1996. Any change now would upset the congressional
13 scheme and potentially introduce new anomalies.
14 Further, a change in market definition would be
15 disruptive to the acquisition of radio properties,
16 relative competitive positions of radio broadcasters,
17 disposition of radio broadcasters and the capital
18 markets.

19 Thank you.

20 MR. KRATTENMAKER: Thank you, Mr. Miller.

21 Mr. Munson?

22 MR. MUNSON: Thank you. Good afternoon
23 and welcome to the other Virginia, Commissioners. We
24 have the Northern Virginia and this is what we call
25 the other Virginia here. So it's good to have you

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1 with us.

2 My name is Ed Munson, I'm the Vice
3 President and General Manager of WAVY and WVBT-TV in
4 Norfolk, Virginia. We're two broadcast TV stations
5 licensed to the Norfolk - Portsmouth - Newport News,
6 Virginia market.

7 My testimony today is basically the story
8 of running two television stations in the market.
9 When I arrived at WAVY in 1991 there were six
10 commercial television stations operating in the
11 Norfolk market. The two independent stations were
12 struggling for survival. My recollection is that
13 neither of them was profitable and certainly neither
14 of them had an appreciable share of local viewing or
15 local ad revenue. Despite the difficulties faced by
16 these independents, yet another station went on the
17 area, WVBT and it was launched in 1992. Needless to
18 say, with those two struggling independents already on
19 the air, there really wasn't much interest in WVBT
20 from programmers, advertisers or viewers. The station
21 was able to muster only enough initial capital to
22 build a minimal technical facility whose signal could
23 reach about 65 percent of the homes in the market.

24 Shortly after initiating operations, the
25 station affiliated with the Home Shopping Network.

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1 While this business plan enabled the licensee to get
2 on the air and with a small positive cash flow, the
3 station really wasn't a serious competitor for viewers
4 or a significant broadcast voice in our market. The
5 solution was to partner with another local station, my
6 station, WAVY, the NBC affiliate. In January 1995, we
7 entered into a local marketing agreement with WVBT
8 through which WAVY assumed day to day operations of
9 the station under the licensee's supervision.

10 In May of 1996, we relocated the station's
11 antenna to our 1,000 foot tower and increased its
12 power to 5 million watts, for the first time reaching
13 every home in the market. Because of those technical
14 upgrades and the station's new promotion and
15 advertising capabilities, WAVY was also able to land a
16 network affiliation for WVBT with a fledgling WB
17 Network shortly after we entered into the LMA.

18 Through WAVY's programming resources, we
19 were able to assemble a competitive slate of
20 syndicated product in local and regional sports
21 programming the other stations in the market wouldn't
22 want to carry. While we were able to grow our share
23 of local advertising in the market from zero to nearly
24 5 percent, we sustained operating losses of about \$2
25 million before becoming cash flow positive in 1998.

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1 In 1996, we were approached by the Fox
2 Television Network about switching WVBT's network
3 affiliation to Fox. Fox had undertaken a campaign to
4 have all of its affiliates carry local news at 10
5 o'clock. The Fox affiliate in Norfolk had declined to
6 do so. It wasn't a surprising decision for a single
7 station with virtually no news infrastructure. It
8 would have been years, if ever, before the 10 o'clock
9 news would have been financially viable in the highly
10 competitive Norfolk market.

11 WAVY, however, was already producing five
12 hours of local news a day. Adding a first class local
13 news program at 10 o'clock could be undertaken for
14 fairly modest capital investment and increase our
15 operating costs under \$1 million.

16 So in August of 1998, WVBT became the Fox
17 affiliate. At that time, we initiated the first and
18 still the only 10 o'clock broadcast news in the
19 Norfolk market. This newscast which was initially a
20 half hour is now 45 minutes, has given viewers in the
21 Norfolk market an additional news option. Moreover,
22 it unquestionably expanded the local late news viewing
23 in the market. WVBT's newscast has recently generated
24 a Nielsen rating of 4.9 or about 33,000 households.

25 Since the 10 p.m. newscast went on the

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1 air, the cumulative total news viewing in late news
2 viewing has grown from 141,000 households to 189,000
3 households in the most recent rating book, an increase
4 of more than 33 percent, substantially faster than the
5 market was growing.

6 Local news is by no means the only
7 contribution WVBT has made to the Norfolk media
8 marketplace. In addition to first class syndicated
9 programming, we've carried a wide variety of local
10 sports and produced a substantial amount of local
11 sports and public affairs programming. And because of
12 WAVY's resources, an investment of over \$4 million,
13 WVBT has been able to construct its expensive new
14 digital television facility on time and is now
15 providing Fox widescreen programming to the market.

16 This station combination is emphatically
17 in the public interest. Many, many more such
18 beneficial combinations are being precluded by the
19 actions of outdated local TV ownership rules. This is
20 particularly true in smaller markets where there is
21 simply inefficient resources to support more than one
22 or two high quality news operations. But, as my
23 experience in Norfolk demonstrates, the current rule
24 is preventing efficient and productive combinations
25 and suppressing potentially vital new local voices

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1 even in the top 50 markets.

2 I urge you to act promptly to recognize
3 the realities of the new local media marketplace and
4 relax the local station ownership rule by adopting the
5 proposal put forth in the comments of the National
6 Association of Broadcasters and permit common
7 ownership of any two stations provided that no one has
8 more than a 10 percent share of the viewing market.

9 Thank you.

10 MR. KRATTENMAKER: Dr. Owen?

11 DR. OWEN: Thank you, Mr. Chairman,
12 Commissioners, Mr. Moderator. I'm an economist and a
13 competition economist. I was once chief economist of
14 the Antitrust Division of the Justice Department and
15 I'm here to talk about competition because that's what
16 the panel is supposed to be about.

17 I hope after discussing competition
18 briefly to link it to the diversity issues that you
19 face. I don't -- I think the localism issues are
20 impervious to logic, so I won't address those.

21 Competition obviously is an important goal
22 and in fact, your statute that requires these biennial
23 reviews mentions only competition and not diversity in
24 the context of what's necessary to retain the rules
25 for the future.

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1 Competition brings benefits to consumers.
2 The point of competition is to benefit consumers, in
3 this case, viewers, readers and listeners. You don't
4 write on a blank slate here. You don't need to invent
5 a new wheel to deal with competition policy analysis
6 when you're analyzing proposed mergers in the mass
7 media. There's a perfectly adequate widely accepted
8 and even admired paradigm for analyzing mergers and
9 that is the merger guidelines that are used as a
10 method of analysis by both the Federal Trade
11 Commission and the Department of Justice.

12 The Commission has, in fact, demonstrated
13 its understanding and ability to use their analytical
14 tools in its recent decision in the Echo Star-Direct
15 TV merger. So I'm not suggesting anything novel. You
16 don't need to invent a new way to think about these
17 things from the point of view of competition in
18 economic markets. By economic markets I mean
19 advertising markets and consumer markets for MBPV
20 services.

21 I think the Commission in approaching
22 media ownership issues, if it's going to pass a
23 rationality test has to employ an approach that is
24 consistent with the method, not necessarily the
25 standard, but the methods in the merger guidelines.

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1 And there's no reason to try and do it in a different
2 way.

3 That means that the present rules, if they
4 are put up against that standard, don't make any
5 sense. They don't pass a rationality test. For
6 example, when you apply the method of analysis that's
7 used in the merger guidelines, you're not likely to
8 find that markets are always defined in terms of
9 technologies or means of broadcasting or frequencies.
10 They're defined in terms of the choices that consumers
11 have. And those choices can, and do, cut across lots
12 of different technologies and methods of broadcasting.
13 So any rule that applies only to television, for
14 example, prejudices the market definition appropriate
15 to a particular merger transaction and that doesn't
16 make any sense. You can't do that in advance.

17 So fixed market boundaries as reflected in
18 rules almost by definition can't pass a rationality
19 test. Moreover, even if they did, in this business,
20 market boundaries are changing quickly and have been
21 changing for some years, so a rule that reflects even
22 a correct, analytically correct analysis of where the
23 market boundaries are, will be out of date and as we
24 all know, even though they have to be reviewed every
25 two years, it's hard to change rules.

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1 The final thing to keep in mind when
2 thinking about economic markets, advertising markets
3 and consumer markets, is that most mergers, the vast
4 majority of mergers are beneficial, that is, they
5 result in efficiencies or new products or new
6 services. In the economy as a whole, of the hundreds
7 and hundreds of transactions that take place every
8 year, only a tiny fraction of them raise antitrust
9 concerns and they are quite properly reviewed to see
10 if they past muster under the antitrust laws.

11 But the presumption is that a merger is
12 pro-competitive absent a showing by the government
13 that it isn't. It doesn't go the other way around.

14 Now the Commission can apply the
15 guidelines or its own version of the guidelines with
16 its own standards, and the antitrust authorities, of
17 course, have an obligation to do the same thing. That
18 would result in a certain amount of duplication, even
19 a great deal of duplication, whether that duplication
20 is wasteful or not is something for the Commission to
21 consider. I don't offer an opinion on that.

22 If you apply merger guidelines analysis,
23 economic analysis that's designed to tell whether or
24 not consumers are likely to be injured by a particular
25 merger, based on the facts of that merger, then I

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1 think you'll find that your diversity concerns are
2 also addressed automatically. In principle, you could
3 have a merger that reduced diversity unduly even
4 though it didn't offend the antitrust laws, didn't
5 reduce competition.

6 MR. KRATTENMAKER: Your time has expired.
7 Are you summarizing?

8 DR. OWEN: Yes. I'll stop there.

9 MR. KRATTENMAKER: Okay, thank you. Mr.
10 Rintels?

11 I'm sorry, this is not part of your time.
12 I should mention here again that one of the things
13 we've done is to provide opportunities for people who
14 would like to propose questions that might be asked of
15 the panel. There are cards in the back of the room,
16 if you want to write a question. People will
17 circulate, pick the questions up and we'll -- there's
18 a woman over there with her hand up. We'll bring the
19 questions up to me and if there's an opportunity, I
20 will ask them. I've already got several for this
21 panel, but I'd be happy to receive more.

22 Excuse me, Mr. Rintels.

23 MR. RINTELS: Thank you, as a Virginian, a
24 native Virginian, I want to thank the Commission for
25 slogging through the Old Dominion slush to be here

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1 today to hear our thoughts about media concentration.

2 My name is Jonathan Rintels. I'm a screen
3 writer and the executive director for the Center for
4 the Creative Community, a nonprofit that conducts
5 research, public education and policy development on
6 behalf of the tens of thousands of writers, directors,
7 producers and performers, who create America's popular
8 and literary entertainment. Numerous winners of
9 Oscars, Emmys, Tonys, Peabodys and other awards for
10 creative excellence serve on our Board of Advisors.

11 Today, the conventional wisdom is that a
12 500-channel universe assures viewpoints from a
13 diversity of sources and competition in the
14 marketplace of ideas. But as respected Wall Street
15 analyst Tom Wolzien concludes in his research study
16 dated February 7th and entered in the record this
17 morning, the reality of today's modern median
18 environment is quite different. Five corporations
19 with their broadcast and cable networks are now on the
20 verge of controlling the same number of television
21 households as the Big Three broadcast networks did 40
22 years ago.

23 In the past, when three or four broadcast
24 networks controlled this many households, the
25 Commission protected the public's interest in

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1 competition, the marketplace of ideas and diversity of
2 viewpoints by requiring independent production of
3 programming. But today, the American public has no
4 protection. Data in this record prove this
5 programming oligopoly, Wolzien's term, not mine,
6 exists both in the distribution and production of
7 programming. For example, NBC owns outright or holds
8 a significant financial interest in 100 percent of the
9 new series on its schedule this season. The other
10 networks are not far behind. Rather than compete
11 fairly in the marketplace of ideas, the networks
12 leverage their control of the publicly owned airways
13 to take over television program production, driving
14 small businesses and creative entrepreneurs, many of
15 whom were women and minorities, out of business.

16 President Bush recently said small
17 business owners represent the enterprise of the whole
18 nation and the diverse talents of our people.
19 America's economy can thrive only when our small
20 businesses thrive. Television is not different. The
21 near extinction of creative entrepreneurs and small
22 businesses has resulted in corporate homogenized bland
23 programming. Even network executives agree. Their
24 quotes are in this record.

25 While there are many highly regarded shows

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1 such as "West Wing" nearly all are independently
2 produced, such as "West Wing," hold overs from when
3 program source diversity was required. The networks
4 themselves have produced little to take their place as
5 evidenced by NBC's decision to spend \$10 million per
6 episode of one more seasons of "Friends."

7 Research shows many Americans receive
8 their information regarding democracy, politics, news,
9 values, history and culture from television
10 entertainment programming. Thus, in this proceeding,
11 the stakes for our nation are far higher than whether
12 we will all be doomed to a future of bland television.
13 When promoting the wide dissemination of information
14 from a multiplicity of sources is a government
15 interest of the highest order, Commission action is
16 indisputably necessary in the public interest as the
17 law requires.

18 Today's internet does not obviate the need
19 for the Commission to act. The same programming
20 oligopoly controls the most visited sites on the net.
21 Moreover, in much of Virginia, including my own home,
22 broadband is a distant rumor. Even among Virginia
23 families fortunate enough to have broadband, I've yet
24 to hear of any that microwave popcorn and gather
25 around the computer to watch internet. They watch

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1 television.

2 The reemergence of the programming
3 oligopoly requires that the Commission create a new
4 program source diversity rule that allows independent
5 producers access to network schedules. And there's no
6 question the Commission has the power to create this
7 rule in this proceeding as the Coalition for Program
8 Diversity reply comments demonstrate. Such a rule
9 will meet all the goals of the Commission in this
10 proceeding. It will provide citizens with viewpoints
11 from a diversity of sources. It will enhance the
12 marketplace of ideas. It will reflect the reality of
13 the modern media environment in which the re-emerging
14 programming oligopoly is eliminating both economic and
15 creative competition. It will promote participation
16 in ownership by minorities, women and small businesses
17 in television.

18 This rule, this win-win-win rule will also
19 withstand future judicial scrutiny. This record is
20 full of data and other evidence documenting the re-
21 emergence of this programming oligopoly and the harm
22 it has caused. As with the Commission's legal
23 authority to create this rule, Judge Posner wrote in
24 Schurz Communications, "The Commission could always
25 take the position that it should carve out a portion

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1 of the production and distribution markets and protect
2 them against the competition of the networks in order
3 to foster a diversity of programming sources and
4 outlets."

5 It is now necessary in the public interest
6 for the Commission to take that position. Promoting
7 the widespread dissemination of information from a
8 multiplicity of sources is the government interest of
9 the highest order in this proceeding. Increasing the
10 profits of a handful of corporations is not.

11 Thank you.

12 (Applause.)

13 MR. KRATTENMAKER: Thank you. Mr.
14 Winston, welcome back to the Commission.

15 MR. WINSTON: Good afternoon, Chairman
16 Powell, Commissioner Martin, Commissioner Abernathy,
17 Mr. Copps, Mr. Adelstein. Thank you for inviting me
18 to discuss the Commission's pending rulemaking
19 proceeding, examining its broadcast ownership rules.
20 I also thank you for inviting Alfred Liggins, a
21 distinguished member of the NABOB Board of Directors
22 earlier this morning.

23 NABOB is a trade association representing
24 the interests of African-American owners of radio
25 stations and television stations and cable television

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1 systems across the United States. NABOB has
2 participated in this proceeding to encourage the
3 Commission not to relax further its multiple ownership
4 rules. Since the passage of the Telecommunications
5 Act of 1996 which significantly relaxed the
6 Commission's ownership rules, the number of minority
7 owners has dropped by 14 percent.

8 The first amendment rights of all
9 Americans to receive a free flow of news and comment
10 from all segments of the population will be damaged if
11 minority ownership continues to be squeezed out of the
12 business.

13 The Commission, the Congress and the
14 courts have historically recognized that the ownership
15 of broadcast stations must be disseminated among a
16 wide number of voices to assure the first amendment
17 rights of the American public are protected.

18 In its comments in this proceeding, NABOB
19 has cited a significant amount of research,
20 demonstrating that minority ownership promotes these
21 first amendment rights by providing viewpoint
22 diversity and promoting competition.

23 For this reason, NABOB has proposed in its
24 comments that the Commission make no further
25 relaxation of its rules. Instead, NABOB has proposed

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1 several improvements for the Commission's existing
2 rules. The Commission should make permanent the
3 Commission's interim policy for processing radio
4 assignment of license and transfer of control
5 applications. The Commission should improve the
6 interim policy by flagging all transactions in which
7 one entity will control 40 percent of the local
8 advertising market or two entities will control 60
9 percent of the advertising market and the Commission
10 should use arbitron markets to define radio markets
11 for application of the multiple ownership rule.

12 The Commission should include an interim
13 policy, a review of the impact of minority ownership
14 of flagged transactions.

15 The Commission should eliminate its policy
16 of granting 6, 12 and 18 month waivers of its
17 ownership rules. If a transaction will require one or
18 more stations to be spun off, the parties should
19 submit an application to spin those stations off at
20 the time the transaction is filed.

21 The Commission should treat all local
22 market agreements as attributable and should require
23 that all agreements between noncommonly owned same
24 market stations be filed with the Commission.

25 NABOB has also requested the Commission

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1 support reinstatement of the minority cash
2 certificate. NABOB commends the Commission for
3 supporting Senator McCain's Small Business Tax
4 Deferral Bill. We hope that legislation will be
5 amended to specifically promote minority ownership.

6 I would also like to make an observation
7 concerning one of the studies commissioned by the
8 Commission in this proceeding. In that study, the
9 Commission's researcher measured news slanting by
10 commonly owned television stations and daily
11 newspapers. This study is startling not for its
12 conclusions, but for its premise. The study assumes
13 news slanting exists and is a measurable phenomenon.
14 It then proceeds to measure this phenomenon.
15 Regardless of the conclusions reached in the study,
16 the study's principal values demonstrate that news
17 slanting exists. The existence of news slanting in
18 and of itself requires retention of the Commission's
19 ownership rules. Once we accept that news slanting
20 exists as a measurable phenomenon, it becomes
21 imperative to continue the Commission's policy of
22 ensuring the dissemination of ownership control of the
23 nation's airwaves among many different and
24 antagonistic voices.

25 In its comments, NABOB cited research

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1 showing that in most major markets the market leader
2 has about 45 percent of advertising revenues and the
3 top two firms control about 74 percent of advertising
4 revenue. The research concluded that this resulted in
5 highly concentrated markets with Herfindahl Hirschman
6 indices exceeding 3,000 in many markets. Thus, NABOB
7 submits that, given examples such as Ann Arbor where
8 Clear Channel Communications currently has over 86
9 percent of the local radio advertising market, the
10 Commission should adjust its flagging procedure to
11 flag transactions which would result in a single
12 entity controlling more than 40 percent of market
13 revenues or two entities controlling more than 60
14 percent.

15 In conclusion, I would like to note that
16 the principal issue before the Commission in this
17 proceeding is what level of industry consolidation
18 should be permitted when the Commission balances its
19 often conflicting goals of promoting diversity,
20 competition and localism. NABOB submits that in
21 reaching a determination of how to balance these
22 competing interests, the Commission should note that
23 diversity and localism are the only two first
24 amendment considerations falling into that balance.
25 The promotion of first amendment rights is the

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1 Commission's principal obligation and in the end, the
2 promotion of diversity and localism must take
3 precedence over the promotional competition.

4 Thank you.

5 MR. KRATTENMAKER: Thank you. Mr.
6 Chairman, if I may, I think I'm going to usurp the
7 prerogative of being moderator and ask the first
8 question. And the reason for that is that I have here
9 a stack of cards from the audience all of which ask
10 essentially the same question in different phrase and
11 I think we should start with this question. I'm going
12 to particularly direct it at Ms. Foley and Professor
13 Croteau, but I welcome comments from anybody. As
14 somebody who taught antitrust for a while, I was not
15 surprised by this.

16 How exactly is competition enhanced by
17 removing the number of competitors? That's the way it
18 was put on one of these cards. And I think that's the
19 question that's on the minds of many in the audience.

20 I'd like to say we went alphabetically.
21 As a result of that, we had three different responses
22 to that already from the middle of the panel.

23 Bruce Owen has told us that if you take a
24 competition focus, that means you're looking at the
25 welfare of consumers or people who buy advertising and

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1 it may oftentimes be the case that a merger just
2 doesn't harm those interests because it doesn't give
3 anyone power to raise prices.

4 Mr. Munson said that sometimes what a
5 merger can do is it can rescue an otherwise nonviable
6 firm. It can provide resources that another firm
7 might not have had. It can bring somebody from a home
8 shopping network to being a network affiliate.

9 Mr. Miller says that the way competition
10 can be enhanced by having fewer firms is that free
11 over-the-air broadcasting is threatened by a number of
12 economic factors, all of which require some level of
13 consolidation if it's going to survive in the face of
14 these competing new media.

15 Those, in sum, are the kinds of answers
16 that some of our panelists have given and I wanted
17 particularly to ask my wing people, whether you agreed
18 with that or whether instead you do take the position,
19 it would be a perfectly respectable position that
20 competition is the number of people in a market and
21 reducing that number just simply reduces competition.

22 Professor?

23 DR. OWEN: I think one of the interesting
24 issues here that is coming up today is the
25 interrelated nature of diversity, competition and

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1 localism, the fact that you can't simply isolate these
2 things. They are interrelated. And so when we're
3 talking about what is competition, it's not just pure
4 numbers, obviously. We can't say in all cases that
5 more necessarily means better content. The recent
6 study from the Project for Excellence in Journalism,
7 for example, showed that in fact when it comes to TV
8 news, local news, smaller broadcast groups had better
9 content in terms of serving the local community than
10 larger ones did.

11 However, at the same time they also
12 realized that sometimes groups do better than
13 individual stations because they have more resources
14 and so forth. And so this issue of competition is not
15 directly tied to the number of entities competing.
16 You have to look at the nuances in all of that, but I
17 think that message that once you get to a certain
18 level, larger and larger companies are not going to
19 help us in terms of diversity and localism.

20 MR. KRATTENMAKER: Thank you. Ms. Foley,
21 would you like to comment?

22 MS. FOLEY: Yes, just briefly. First of
23 all, I come from a journalism background and I come
24 from a news background and so I do care very much
25 about localism and much less about pure competition.

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1 And I think that when it comes to news and when it
2 comes to reporting the news and setting the local
3 news agenda it very much depends upon the number of
4 players. Because if you don't have competing
5 antagonistic sources, you're going to have one entity
6 or few entities setting the news, so anybody who's
7 ever worked in a newsroom notes that competition is
8 what drives the news agenda. It's what drives
9 reporters to go out there and beat the competition, to
10 scoop their fellow reporters. So I think from my
11 perspective, it absolutely does matter.

12 MR. KRATTENMAKER: Thank you. Mr.
13 Rintels, did you want to comment?

14 MR. RINTELS: With regard to the
15 nationwide rules, I know the Commission has asked in
16 its notice of rulemaking whether it dare say the dual
17 network rule if two networks would merge together
18 whether they would then discretely target programming
19 to one audience on one network and one audience on
20 another network because that would be in their
21 competitive interests.

22 Prior history has shown that that's not
23 the reality at all, that when CBS and UPN were under
24 common Viacom ownership that UPN simply reran CBS
25 programming rather than get original programming for

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1 its own discrete audience. And the same occurs with
2 Mothership Broadcast ABC network than being rerun on
3 satellite ABC Family and other networks owned by the
4 same parent company.

5 MR. KRATTENMAKER: Thank you. Mr.
6 Winston, did you want to comment?

7 MR. WINSTON: Yes. I just wanted to say
8 that as was pointed out a minute ago, the issues
9 addressed by the Commission here, localism, diversity,
10 competition, are interrelated. They can't be
11 separated out. And depending upon how you define
12 competition, it requires diversity and localism and
13 it's not something that can be separated out as simply
14 as might be suggested by someone from the panel.

15 MR. KRATTENMAKER: Dane, can you remind us
16 when are we shooting for public mike comments?

17 MR. SNOWDEN: We're shooting at 2 o'clock.

18 MR. KRATTENMAKER: We'll go somewhat
19 beyond that. I've been keeping you from the
20 Commissioners for a long time. I shouldn't do that
21 anymore. I should turn this over to the
22 Commissioners.

23 COMMISSIONER ADELSTEIN: I had a question
24 for Mr. Owen and maybe Professor Croteau, you could
25 follow up on this.

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1 We're both Stanford men. It's good to
2 have you here. I was in the History Department.
3 You're over at Economics and they're not that far
4 apart in the quad, but it seems like they're miles
5 away here because I have a different reading of the
6 statute than you do as far as what it means.

7 You said, if I understood you correctly,
8 that it was about competition, the new standard, but
9 if you look at the broader context it said whether
10 it's in the public interest in light of competition.
11 So we look at, as a historian or somebody is looking
12 at the legal history of this, the Agency traditionally
13 has looked at the public interest as being about
14 competition and localism and diversity.

15 So I'd be curious if you really believe
16 that we don't have to look at those two as issues in
17 the public interest, and then if you could explain
18 that in light of the example that we heard about the
19 Richmond experience, since that's the one local
20 example that we have, as whether or not the public
21 interest was served in this case. I don't think you
22 believe it was. I'd like to hear your response to
23 that.

24 DR. OWEN: I think this is the way legal
25 points should be debated, between economists and

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1 historians.

2 (Laughter.)

3 The public interest means whatever the
4 Commission says it means. And then the courts, of
5 course...

6 I think that it's a perfectly sensible
7 thing to worry about diversity from a competition
8 point of view because you can think about the
9 marketplace of ideas metaphor, using the same tools
10 that you do to think about economic marketplaces. How
11 many competitors are there, how many sources are
12 there, what are the barriers to entry, what
13 alternatives are available to consumers?

14 I think if you do that, what you discover
15 is that the choices available to consumers are far
16 wider than the choices available to advertisers and as
17 a result, markets in the marketplace of ideas are
18 going to be defined much more broadly. And therefore,
19 if you worry about economic concentration, economic
20 markets, you'll automatically take care of in most
21 cases, automatically take care of your diversity
22 concerns.

23 The other thing that I would say about
24 that is that measuring market shares in the
25 marketplace of ideas requires you to treat each source

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1 equally and not to weight them by their current
2 popularity. The point of the first amendment is to
3 make sure that unpopular ideas have access to the
4 public. The public has choices. In antitrust, there
5 are certain markets where you give every competitor,
6 despite their current market share equal weight. And
7 I think the same principles should apply when you're
8 measuring concentration in the marketplace of ideas.

9 After all, the popularity of a given media
10 outlet is a demand side phenomenon. It's what people
11 like to get, like to read, like to watch. It has
12 nothing to do with the popularity of the source. The
13 unpopular idea that we're trying to protect is by
14 definition got a small audience. It's unpopular.

15 I probably used up more than my share of
16 time here.

17 MR. KRATTENMAKER: Commissioner Copps?

18 COMMISSIONER COPPS: Yes, I'd like to ask
19 Mr. Winston --

20 MR. CROTEAU: I'm sorry, I was asked to
21 respond.

22 COMMISSIONER COPPS: My mistake, excuse
23 me.

24 MR. CROTEAU: As we all know, there's
25 often the --

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1 [END TAPE 3, SIDE A; BEGIN TAPE 3, SIDE
2 B.]

3 -- my concern here is that there's too
4 much discussion about creating formulas, whether
5 they're economic formulas or otherwise that help to
6 dictate public policy and I think we have to
7 understand economic formulas, formulas to measure
8 competition in the marketplaces and so forth, are
9 useful tools. But they are part of a broader tool kit
10 that we need to use, some of which has to do with
11 experience and some common sense to be blunt about it.

12 And when you look at particular cases, how
13 this actually works and particular markets, what
14 actually happens in localities and I think that's why
15 these sorts of hearings are so important to hear those
16 stories, you find that a decline in numbers does mean
17 something to those communities because it does mean a
18 loss of competition very often and consequently that
19 translates into a loss of local content, a loss of
20 diversity and so on.

21 And so we have to supplement, I think, the
22 economic theory with some other types of information
23 that, in my opinion, are just as valid.

24 MR. KRATTENMAKER: Thank you, and pardon
25 me. Commissioner Copps.

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1 COMMISSIONER COPPS: Mr. Winston, we heard
2 earlier in the panel earlier today that a number of
3 radio station owners has dropped by over a third since
4 1996. You pointed out in your eloquent testimony the
5 number of minority owners has decreased by 13 percent.
6 I'm hearing this from so many groups that minorities
7 are now under represented in ownership and are poorly
8 represented by the media and programming. I'm hearing
9 it from your organization and the National Association
10 of Black Owned Broadcasters. I'm hearing it from the
11 Minority and Media in Telecommunications Council.
12 Rainbow, PUSH and National Association of Hispanic
13 Journalists, Church of Christ, Women's Institute for
14 Freedom of the Press. It goes on and on. I'm also
15 hearing that advertisers say that stations are
16 ignoring minority communities that are critical target
17 markets for their products.

18 I gather what you're saying is not only
19 don't abolish these rules, but you're saying we have
20 pretty much reached the limit of what we can tolerate
21 in changing the rules. I know I've talked to a lot of
22 members in your group, as individuals, and some of
23 them have done pretty well for themselves in the world
24 of the media, but so many of them tell me that in the
25 increasingly consolidated environment right now, they

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1 could not replicate the progress that they made. They
2 wouldn't be where they are if they were starting out
3 right now.

4 Could you comment on that and also on the
5 question do you think we have really reached the limit
6 on as far as we can go on some of these rules insofar
7 as the impact on diversity is concerned?

8 MR. WINSTON: Well, certainly in the radio
9 area. NABOB has focused primarily its comments in
10 this proceeding on the radio area because we have
11 significant number of stations that are owned by
12 minorities. We have 240 stations that are owned by
13 African-Americans in the radio industry. In
14 television, there are only 20 television stations,
15 some of them are fairly marginal stations. It's
16 probably too late. The industry continues to
17 consolidate. Even if you hold the line on your TV
18 rules, minorities just do not have an opportunity to
19 buy into that business.

20 In radio, as you pointed out, Radio One is
21 our shining star. They're the folks that we all look
22 up to and say we can do that one of these days. But
23 the reality is that most minority owners are not going
24 to be able to do what Radio One has done. And many
25 are trying. But what we have found is that the

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1 consolidation rules, the Clear Channels of the world,
2 the Citadels, the Affinitys have too much of a head
3 start.

4 I have current owners who call me all the
5 time, "I bid for a station, Cumulus outbid me, Citadel
6 outbid me, Clear Channel outbid me." So that with no
7 national cap, it's very difficult to see how we're
8 going to be able to continue to grow as owners and
9 further relaxation of the rules only makes it worse.

10 COMMISSIONER COPPS: That's a really
11 dramatic statement that everybody in this audience
12 ought to pause to think about. It's already too late
13 for the television and the radio situation in that
14 dire situation too. Where we are right now, without
15 further relaxing the rules. If that's not a big red
16 stop sign, it's still cautionary in light of the first
17 magnitude.

18 Does somebody else want to comment?

19 MR. VICTOR MILLER: I just want to say
20 that let's not forget that since 1996 Salem, a
21 Christian broadcaster who is now a public company.
22 They weren't before that. Entrevision, an owner of
23 Spanish language newspapers, magazines, outdoor and
24 television stations is now a public company. They
25 weren't before, 1996. Radio One was not a public

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1 company. Spanish Broadcasting was not a public
2 company. PAX, a Christian television broadcaster is
3 also in the marketplace. So you can -- some certain
4 broadcasters have taken advantage of the capital
5 markets, like Alfred said this morning, decided that
6 the rules had changed. They got in the game. They
7 went into the public markets and they are now very
8 viable public companies buying stations along with
9 everybody else and outfitting a lot of other
10 broadcasters for properties.

11 So there has been some benefit. We do
12 have five, six public companies that didn't exist
13 before the rules.

14 COMMISSIONER COPPS: I think Mr. Liggins
15 made it pretty clear this morning that was kind of a
16 question of fortuitous timing and taking advantage of
17 some of the programs that we had at the Commission and
18 what I'm hearing from Mr. Winston's members is trying
19 to replicate that is very difficult.

20 Let me ask you another question. Mario
21 Gabelli (Phonetic) who is known for his media
22 expertise is predicting pretty widely that there's
23 going to be a rush of takeovers and combinations in
24 broadcasting and newspapers if we significantly change
25 these rules. You're an expert analyst, but I'd like

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1 other people to chime in on this too.

2 What do you think is going on out there
3 right now if we would eliminate some of these caps?
4 Would we have a rush to consolidation or -- what do
5 you foresee and what do some of your analysts see down
6 there?

7 MR. VICTOR MILLER: The bottom line is I
8 think that the Federal Communications Commission has
9 actually sold itself short on how hideously successful
10 some of its changes have been in the marketplace.

11 If you look at newspaper broadcast cross
12 ownership, which has been around for 28 years, no
13 relaxation of that, look at the Atlanta Journal
14 Constitution, the Dallas Morning News, the Chicago
15 Tribune, some of the preeminent newspapers in the
16 United States of America. They have owned TV stations
17 in the same markets. If you actually look at the
18 quality of those newspapers, it is undeniably good.
19 Now if you look at the television stations where
20 there's co-ownership where they have newspapers and
21 television stations, on average, that local news beats
22 competitors in that marketplace by almost 60 percent
23 and the third place operator by 200 percent in the
24 early news, where there's no influence from prime time
25 viewing whatsoever, because of the quality, the

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1 increased quality that they can bring to the paper and
2 the newspaper at the same time.

3 Now in terms of the radio, 60 percent of
4 the radio stations were basically not profitable in
5 1991. Now you have a situation where the market is
6 completely stabilized. You've done a great job.
7 There's been 9,000 stations that have transferred
8 hands to \$120 billion worth of acquisitions and it's
9 been, I think, a very great success.

10 Duopoly. You want to talk about duopoly.
11 Sixty-five percent of all duopolies, those stations
12 earn less than 5 percent of the revenue share and 80
13 percent of the duopoly are related to the new
14 networks. Telepature (Phonetic), UPN, WB, Univision,
15 Fox, they gave birth to all that, to a very viable and
16 robust and large station group.

17 And lastly, on the retransmission consent
18 rules which you guys changed in 1993, that's added a
19 tremendous number of new cable networks and we talked
20 about diversity in that last panel. I just want to
21 remind you the first 20 weeks of this year, one third
22 of all the audience every night is watching A&E, ESPN,
23 History Channel, Lifetime, American Movie Classics,
24 Bravo, CNBC, MSNBC, Fox News, TVFoodNet, Home and
25 Garden, Cartoons, CNN Headline News, Black

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1 Entertainment Television, Nickelodeon. That's a third
2 of the viewers and how can you say that a lot of those
3 networks aren't the kind of programming that you'd
4 like our children to sit down and watch?

5 COMMISSIONER COPPS: That was not my
6 question. My question is --

7 MR. VICTOR MILLER: No, I understand.

8 COMMISSIONER COPPS: Sitting here trying
9 to judge what are the results going to be, what kind
10 of a mad rush to consolidation are we going to see?

11 MR. VICTOR MILLER: You're going to see
12 increased duopoly. You're going to see increased
13 newspaper broadcast cross ownership because of the
14 benefits we've run through. The marketplace compels
15 change --

16 COMMISSIONER COPPS: We can debate the
17 benefits and the negatives later on. We need to do
18 that before we make a decision. I'm just trying to
19 see what the market says. You're a guy from the
20 market. You understand the market and you're telling
21 me that there is going to be significant additional
22 consolidation if we significantly change the rules?

23 MR. VICTOR MILLER: When you have 28 years
24 of no rule change, there will be some changes in
25 newspaper and broadcast. I don't think it's going to

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1 be a mad rush, no, I don't think.

2 COMMISSIONER COPPS: Mr. Rintels, you
3 wanted to comment?

4 MR. RINTELS: I did. I'm not a man of the
5 markets, but Tom Wolzien is and in his study which I
6 referred to earlier, he pointed out that if the
7 national ownership TV audience ownership cap is
8 lifted, or relaxed, that there will be a mad rush to
9 buy up local affiliates and that will occur
10 particularly where there's overlap with Comcast or one
11 of the other big cable providers because the networks
12 will then use the retransmission consent for the cable
13 operator to use that local station as a baseball bat
14 to force them to take their other cable channels or to
15 move their other cable channels up a tier or into the
16 more basic level of service.

17 And this is something that really hasn't
18 been explored, at least as far as I can see in the
19 comments, that that cap is important in terms of
20 programming diversity and staving off the programming
21 oligopoly.

22 COMMISSIONER COPPS: Thank you.

23 MR. KRATTENMAKER: I was going to move to
24 Chairman Powell, but if you wanted to --

25 CHAIRMAN POWELL: I just wanted to make a

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1 couple of quick points. I thought what we were here
2 to do is to find out what the benefits and detriments
3 of possible changes would be. That is the ultimate
4 question. I think what the panel seems to universally
5 agree with and if they don't, I find it fantastic, is
6 that any given combination could be good or it could
7 be bad for consumers. The only thing we should care
8 about is if it's good for consumers or bad for
9 consumers. There are a lot of groups who may not
10 benefit from a combination, but the one that we care
11 principally about is for consumers. And I think it is
12 relevant, whether any changes that take place would be
13 changes that are positive for the consuming public. I
14 think that it's completely legitimate to point out the
15 detriments that could follow, but I think as Mr.
16 Munson pointed out, other people can also postulate
17 anecdotes where consumers came out better as a
18 consequent of the market structure change.

19 What the government's job is to do is to
20 have a mechanism to filter the one from the other and
21 that's really what we're trying to do, not just win a
22 debate on whether consolidation is bad or not. Even
23 in and of itself. Of course, it's both. It depends.

24 The other thing is I think that we have to
25 accept certain realities.

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1 Mr. Winston, the truth is, I think, in
2 radio that the percentage of minority ownership has
3 actually increased principally because of Mr. Liggins'
4 company over all in the last few years and they're
5 taking advantage of the same dynamics that other
6 people are taking advantage of to be successful. It's
7 not enough. I'm one of the biggest supporters of
8 minority ownership policy of anyone as you know, but
9 it is a change in the marketplace and it's real.
10 There's an enormous increase in Spanish language
11 programming that has occurred in the last few years.

12 One of the things that I'm going to throw
13 open wide as a question because Professor, I think you
14 alluded to, which is actually one of the concerns that
15 I have, it's near the end you briefly suggested even
16 noncommercial.

17 Now a lot of what I hear today which is
18 very informative to me suggests that one of the
19 problems isn't so much big, isn't so much corporate,
20 but that it's commercial, but anything by definition
21 that's commercial is profit seeking. I don't know how
22 to differentiate between more meritorious groups, but
23 some of the independent producers we're talking about
24 are Sony Pictures or Carsey-Warner. These are not
25 small, independent little guys seeking and they're not

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1 doing it for free. I commend them just as I commend
2 any writer or producer, but we should put on the
3 record there are very few people who are doing this
4 business not for business.

5 But it seems to me one of the things
6 that's very unique in the American system is that our
7 television system is almost totally commercial. Most
8 democracies deal with this threat to democracy by
9 having government-sponsored programming, whether it be
10 the BBC or those kinds of programming in which
11 individuals are taxed and in the case of the U.K. \$150
12 roughly a year to support a medium that doesn't have
13 to be bound by these commercials.

14 So I'm curious that if people think the
15 biggest problem in the United States is that as long
16 as we have strong commercial incentives for the
17 production of what we do and see, exclusively, we'll
18 always have this problem and that maybe a greater
19 commitment to public broadcasting or forms of public
20 broadcasting is one of these things this country, the
21 government ought to put more stock in.

22 I heard you mention that in passing, could
23 you --

24 MR. KRATTENMAKER: I just have to
25 interject. I have the sense that most people on the

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1 panel would like to speak to that so I would ask could
2 you each try to keep your remarks brief, because we're
3 trying to get to audience comments.

4 Professor?

5 DR. OWEN: Yes. I think that's a very
6 important point and it speaks precisely to the point
7 that you made earlier which I have to respectfully
8 object with. That is, I don't think the primary
9 responsibility of this Commission is to protect the
10 interests of consumers. That is certainly a piece of
11 it. But it is to protect the interests of citizens
12 and that includes a consumer side.

13 (Applause.)

14 But also includes other features of the
15 media landscape that do not lend themselves to this
16 sort of consumer analysis and your point about public
17 broadcasting is an excellent one. We are not talking
18 about public broadcasting and I think that's a real
19 shame because in fact, a lot of the dynamics that
20 we're talking about today that we're concerned about
21 have to do with how marketplaces operate in general
22 and the kinds of economic forces that influence in the
23 end the content more generally and it is absolutely
24 important to have a noncommercial alternative to that
25 if we're really going to talk about diversity, if

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1 we're really going to talk about meeting the needs of
2 minority communities and so forth and that is public
3 broadcasting. It's public radio. It's low power
4 radio which is a piece of this as well.

5 (Applause.)

6 MR. KRATTENMAKER: Thank you. Did any of
7 the other panelists want to comment on the Chairman's
8 question.

9 I'm sorry to be the bad guy in this. If
10 each of you talk for two minutes, we're going to go
11 all through the public comment period. So please try
12 to keep your remarks brief.

13 Ms. Foley?

14 MS. FOLEY: Yes. I was just going to say
15 that there is a point to what the Chairman said in
16 that in other countries like the United Kingdom and
17 Canada there is a strong, public service broadcasting
18 component there. We don't have that in this country
19 and part of the reason we don't have that is that we
20 give our airways away to these commercial broadcasters
21 and so that's why this Commission does have to look at
22 the public interest aspect of this. It isn't a pure
23 economic analysis. We've made a decision as a country
24 to operate our media system this way. It may be a
25 good way to operate. I'm not saying, I'm not arguing

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1 against it. I'm just saying that that then argues for
2 us not to do an economic analysis and to really focus
3 on in a proceeding like this the public interest.

4 MR. KRATTENMAKER: Thank you. Mr. Miller?

5 MR. MILLER: Again, all we're talking
6 about when we talk about broadcast free over-the-air
7 broadcast television as its own ecosystem, it has two
8 pieces: a network that produces, that takes \$37
9 billion worth of risk over the last three years to
10 produce programs and local stations which try to serve
11 the local marketplace. There are seven pressures that
12 have been bearing down on both of these models and if
13 not addressed in the medium or short term that free
14 over-the-air broadcast system that we don't pay for
15 that only has one single revenue stream will change
16 markedly and we don't know how it's going to change,
17 whether consumers are going to have to pay for that
18 model or whether it's going to degrade the model so
19 much that it's not a viable, robust market and as
20 someone mentioned this morning, 15 percent of America
21 still relies solely on over-the-air broadcasts as
22 their only way of seeing television in their homes
23 because they don't have cable or satellite.

24 MR. KRATTENMAKER: Mr. Munson?

25 MR. MUNSON: I can only say this. I can

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1 never be embarrassed by the fact that my television
2 stations make a profit. Part of that profit goes to
3 our shareholders. Part of that profit goes back into
4 the product. We've increased the number of hours of
5 news and public affairs programming and sponsorships
6 of events and been able to employ 200 families to
7 provide a paycheck for them.

8 So any good broadcaster is going to pour
9 part of the money into the product and part of the
10 money into profits.

11 MR. CROTEAU: I agree with the Chairman
12 that the complaints about programming that we've heard
13 have been chiefly about programming that's responsive
14 to what consumers want to see. And that does leave
15 out of the count programs that consumers don't want to
16 see, at least in large numbers. If it's in the public
17 interest to subsidize such programming, that's fine,
18 but public broadcasting is not the way to do it. If
19 you want to subsidize programming, the programming
20 should be subsidized as programming and be available
21 for any kind of outlet. There's no reason to waste
22 scarce spectrum resources on public broadcasting
23 stations that viewers don't know how to tune in.

24 MR. KRATTENMAKER: Mr. Rintels.

25 MR. RINTELS: I take the Chairman's point

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1 about Sony, not a small business. But Carsey-Warner
2 certainly was. It was two people with one telephone .
3 And it was by virtue of their innovation and
4 creativity and efforts that they became a large
5 business.

6 So we're not pretending that the creative
7 community or independent producers are not in this to
8 make a profit, but my organization doesn't only
9 represent those producers. We're talking about the
10 people who simply work on shows and we're not able to
11 do our best work when it's the networks who are
12 calling all the creative shots and so I think that
13 independent production was a wonderful way for small
14 businesses, minorities and women to get into the
15 television business. It took very little capital.
16 All you needed was a great idea, but that's gone now.
17 So really, the question for us is by virtue of the
18 networks' control of the airways, should they be able
19 to exclude all the other voices that are out there?
20 We don't think that's right.

21 Should they be able to monopolize the
22 production of programming and not compete in the
23 marketplace of ideas. We just don't think that's
24 right.

25 (Applause.)

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1 MR. KRATTENMAKER: Mr. Winston?

2 MR. WINSTON: I just wanted to respond to
3 the Chairman's comment about Radio One. Certainly,
4 we've very happy that Radio One has had all that
5 growth over the last several years, but -- and you're
6 right, the total number of African-American owned
7 stations has grown primarily because of the growth of
8 Radio One.

9 The concern I have, of course, however, is
10 looking at BET. The African-American community pinned
11 all of its hopes in television on one company. That
12 company sold out. Radio One is a publicly traded
13 company like every other publicly traded company, it's
14 under pressure from Wall Street financial sources to
15 keep showing revenue growth or find itself under
16 pressure to sell out too.

17 I think that the African-American
18 community shouldn't say that we're going to pin all
19 our hopes on one company no matter which company it
20 is, no matter how great they are. And I don't think
21 the Commission should ask us to do that either.

22 Thank you.

23 MR. KRATTENMAKER: Commissioner Abernathy?

24 COMMISSIONER ABERNATHY: Thank you.
25 You've brought up a lot of points. I have many

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1 questions, but I know where to find you guys. I will
2 submit my questions. I'd rather hear from all of you
3 and if the audience has any questions, I'm happy to
4 jump in, but I'm just going to pass for now.

5 MR. KRATTENMAKER: Thank you.
6 Commissioner Martin?

7 COMMISSIONER MARTIN: I just have one
8 question.

9 Mr. Miller, you talked about the
10 importance of changing some of our rules for the
11 maintenance of free over-the-air broadcasting and
12 talked about the limited revenue stream that they have
13 and yet the increased costs that they've incurred,
14 particularly going through the digital transition.

15 Isn't there an opportunity though for them
16 also to have additional revenue streams from that if
17 they chose to multi-cast in a digital context? If
18 that was the case, are there other things that
19 inhibit, maybe digital carriage issues, or whatever,
20 but are there -- is that not a potential other
21 additional revenue stream for them that would have
22 some positive benefits on the other side?

23 MR. MILLER: When you spent \$4 to \$6
24 billion are you likely to get a real return on that
25 investment and that's the unanswered question right

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1 now.

2 As you know, we have problems with the
3 rights, the rights when you digitally send something
4 over the year that it could be stolen by someone.
5 That has not been fixed yet.

6 We don't have the transmission standard is
7 still not -- we don't know whether it's a robust
8 standard yet and you've certainly helped with tuner
9 issues and cable operability issues which were not
10 solved, even six months ago. And then you have the
11 consumer that now has to spend a lot of money to
12 change a TV set and as you know, the average TV set
13 lasts anywhere between 15 and 20 years.

14 So there's a lot of pieces that have to be
15 solved for it to be a robust system, but yes,
16 philosophically will we be able to multicast?
17 Absolutely. But right now, we don't have all the
18 pieces in place to even approach that yet.

19 MR. KRATTENMAKER: My thanks to the
20 panelists. You all were terrific. Thank you for
21 braving the weather and coming down here.

22 We're now going to turn to a public
23 comment portion of the meeting. I notice that it's
24 supposed to end in 10 minutes. We'll go on for at
25 least 20.

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1 Dane, I think you have, are there some
2 people who are waiting from last time to speak?

3 MR. SNOWDEN: Sure. I would ask that
4 Allison Bresnick, Dan Pottle, Christopher Maxwell,
5 Raine Burrows, Silver Persinger and Bob Wolfner be the
6 first to go to the microphones.

7 While they're doing that, I want to have a
8 scheduling update. What we're going to do is we're
9 going to take this all the way to about 2:40 and then
10 we're going to start the next panel immediately after
11 that so the next panelists please get ready at 2:40.
12 We're going to begin at that point. So we'll start
13 with Allison. And again, you all have two minutes.

14 MR. KRATTENMAKER: We're going to give you
15 two minutes. The red light will come on and will you
16 please stop at the end of your time so others can
17 speak.

18 MS. BREZENECHEK (Phonetic): My name is
19 Allison Brezenchek and I am the Vice President of
20 Media Reform for the Action Coalition for Media
21 Education. I want to first just specifically thank
22 Commissioner Copps for all of his advocacy efforts
23 regarding the public interest of the mass media. We
24 really appreciate your commitment to that.

25 First of all, I want to say that being

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1 able to communicate to the public is power. Mass
2 communication. And one of the things we need to pay
3 attention to is what's not there and I want to
4 specifically talk about what hasn't been paid
5 attention to related to these FCC hearings and media
6 deregulation. Why haven't these issues been in the
7 mass media? The mass media is there to inform us and
8 to let us know about things that are related to the
9 public interest? Why haven't they been covering these
10 issues?

11 The only reason that I can think of is
12 because of the financial interests that they have in
13 getting further deregulation to occur. And that is a
14 big conflict between financial interests and public
15 interests that are not being addressed here.

16 (Applause.)

17 I also wanted to comment on programming
18 content. We've had some controversy in the panel
19 about is programming content appropriate to be
20 discussing here and why is that being commented on? I
21 think that again goes back to the public not being
22 informed. The reason why the public doesn't comment
23 on programming content is because most of them
24 probably don't know the FCC exists, don't know what
25 deregulation is and don't know the steps to take to

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1 voice their concerns. The only thing that they do
2 know is that they don't like what they see on
3 television. What other means do they have to comment
4 about it other than program content? And therefore, I
5 think that's why they comment on that specifically.
6 If the mass media was educating them about
7 deregulation and things of that nature, then they
8 would have more to talk about.

9 Related to consolidation, I think that
10 consolidation leads to the recycling of programming.
11 A specific example is --

12 MR. KRATTENMAKER: Thank you.

13 (Applause.)

14 MR. PODWELL: Hi. I'm sure some of you
15 are wondering why we dressed like mad scientists
16 today? And it is in response to a comment made by the
17 Chairman that he only wants to hear from media
18 scientists and that our commentary has been too
19 emotional and too political.

20 Well, I'm not a scientist, I am a tech, a
21 very small radio station, WPEB, in West Philadelphia
22 and we don't run plugs. We don't do public
23 fundraising campaigns. We just have benefits, mostly
24 in the forms of parties. Occasionally, we get
25 donations from our friends. We're a very small

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1 station and we've had a few grants.

2 I think our existence, it's a leftover
3 from the 1970s. It's an old Class D license and our
4 existence is proof that the public interest is not the
5 same thing as business interest because we're the only
6 kind of voice for the kind of community in which we
7 exist.

8 I know that we're talking about
9 deregulation. I have to say I think that Spectrum
10 Management plays into the equation here. LPFM as was
11 these reforms that happened during Chairman Kennard's
12 administration was a big step forward and it was
13 special interests, it was business interests such as
14 NPR, National Association of Broadcasters that pushed
15 Congress to eviscerate it. There was a rider attached
16 to a budget appropriations bill sponsored by Senator
17 Rod Grahams who not surprisingly soon after lost the
18 election which is what happens -- which is what
19 ideally happens.

20 MR. KRATTENMAKER: Mr. Podwell, thank you
21 very much.

22 (Applause.)

23 Mr. Maxwell.

24 MR. MAXWELL: Thank you. My name is
25 Christopher Maxwell. I'm the Vice President of the

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1 Virginia Center for Public Press. We are a low power
2 FM applicant. We train people to create their own
3 television shows and thus tell their stories their way
4 without the filter of too many other influences,
5 editors, owners, advertisers, underwriters, etcetera.
6 So you'll hear a lot of things on our programs that
7 may not be perfectly polished, but we get a lot of
8 viewers because we have authenticity to offer. So we
9 use say, for example, an ancient titler, an omega from
10 1984, but it gets the titles up and it doesn't seem to
11 matter to our audience.

12 A lot of the money problems come from
13 concerns about creating a product for a thin, rich
14 slice at the top or the great masses and not
15 necessarily kind of all the leftover -- people in
16 between.

17 I'm concerned that the studies, however,
18 unfortunately, are irrelevant. They're invalid.
19 Here's the problem.

20 Mr. Powell, you voted against low power
21 FM, in part, you said because you were concerned that
22 LPFM would take some listeners away from commercial
23 minority broadcasters that were on the edge of
24 bankruptcy and that might push them over or cause
25 other problems. Well, okay, but in band on channel

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1 digital audio broadcasting has been proven by tests
2 and by Clear Channel's own testimonies and tests to
3 jam the signals of stations adjacent to an ibox
4 station. That doubling of the stations on the dial
5 then removes those stations from people's selections
6 and choices. That then means we go from say 33
7 stations on a car radio in Richmond down to say 22 or
8 23. And what if that one station that disappeared was
9 the one station that spoke to your soul, the one
10 station that carried your news, your religion, your
11 viewpoint, your ethnic news, your whatever? Then it's
12 a 100 percent loss.

13 So that means that we have already
14 accepted --

15 MR. KRATTENMAKER: Thank you, Mr. Maxwell.

16 Your time is up. You can submit your information for
17 the record, as you continue.

18 Ms. Burrows, please.

19 MS. BURROWS: Hi. I'm the mother of a
20 2-year-old living here in Richmond and I'm very
21 concerned about the deteriorating quality of
22 television in this country. When I was a child, my
23 parents made educational films and I sometimes
24 appeared in them. They were often shown on
25 television, not only on PBS, but also the networks.

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1 I wish I could find programs like that
2 today for my little girl to watch. The point is there
3 were more ways back then for people to produce
4 interesting programs and get them distributed on
5 television. Now the media outlets are pretty much
6 controlled by huge multinational corporations.

7 The best programs don't get aired because
8 of the obsession to maximize profits.

9 Today, we are bombarded with sensational
10 violent mindless shows. The people of this country
11 have no way to use airways that supposedly belong to
12 us except for local cable access TV. The FCC should
13 be deeply concerned about what is happening. They
14 should protect the interests of the people and look
15 for ways to use their regulating power to encourage
16 the independence of the smaller stations throughout
17 the country. We don't want Fox and Viacom owning
18 every station we turn to on the dial. We do not want
19 one corporation quietly buying up 1200 channels so
20 they can maximize profits by making pure programs.
21 This is already happening in radio.

22 Please do not make the same mistake in
23 television. If we do still live in a democracy which
24 is at work in this room today, then we need to keep
25 television open for as many voices as possible.

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1 I know I speak for so many parents in this
2 country who grew up loving TV and now worry about
3 letting our kids watch it at all.

4 (Applause.)

5 MR. KRATTENMAKER: Thank you, Ms. Burrows.
6 Mr. Persinger (Phonetic)?

7 MR. PERSINGER: Hello, Chairman Powell and
8 Commissioners. Thank you for the privilege to speak
9 to you today.

10 My name is Silver Persinger. I live in
11 Richmond, Virginia. I come today to tell you to
12 oppose removing restrictions on ownership of media
13 outlets.

14 I come to you today, before you today as
15 an advocate of the golden American ideals of
16 democracy, free speech, freedom of press, liberty and
17 freedom.

18 What we all know, but what hasn't been
19 said is that television is the most powerful source of
20 propaganda in this country, a major source of
21 information, education and social values. Information
22 is power, but information is also wealth.

23 This marketplace of ideas and the funny
24 thing about ideas is it's hard to sell them. Ideas
25 inherently are free and your whole -- all this stuff

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1 is centered around the economy and I identify myself
2 as a socialist and I feel real threatened by this
3 dependency on economy to justify every action and I
4 don't know, I just don't see a real place for
5 socialism being discussed in commercial media which
6 looks like the way we're heading.

7 This is an essential tool of political
8 speech and it's largely denied to ordinary people. If
9 you truly want diversity, you need to increase public
10 access to the media.

11 Just look -- just take a look at the rules
12 already enacted by the Commission. One of the
13 Commissioners or panelists mentioned that the first
14 rules banning ownership of multiple radio stations
15 occurred in 1927. I think you would be forgetting the
16 wisdom of previous FCC Commissions. These rules were
17 instituted at a time when there were fewer stations
18 and only about five years after the initial radio boom
19 of 1922 and 1923. The Commission recognized the
20 importance of the distribution of information.

21 MR. KRATTENMAKER: Thank you, Mr.
22 Persinger.

23 Is Mr. Vuckmer there?

24 MR. VUCKMER: Thank you. My name is Bob
25 Vuckmer. I am a citizen or as referred to by a

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1 panelist, I'm a consumer. I object to that
2 classification. I'm here as a citizen and a resident
3 of Virginia. I want to state very clearly that
4 perception in my opinion is reality. Everyone creates
5 their own reality, so I'm speaking in terms of my own,
6 really for my wife and I.

7 I'm going to speak about a reality that is
8 my perception and the perception is that what I've
9 heard today, we're really talking about corporate
10 policy as opposed to public policy and when I say
11 public policy I mean citizen policy. I get enough
12 phone calls and attempts to take my money as a
13 consumer. I don't want to be thought of as a consumer
14 by a public agency, the FCC.

15 Secondly, we have lost our ability in
16 America through the media. Free press, in my opinion,
17 is all the media. To agree or disagree, we have come,
18 I think, in a fashion and form now where it's only
19 fashionable to agree. Whatever the opinion is that is
20 being pushed, by the media, by whatever media outlet,
21 is the one which we're expected to agree, with which
22 we're expected to agree. And I disagree with that.

23 I think a free press, a free media means
24 that there's this antagonism that everyone talked
25 about in this room that allows free exchange of ideas

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1 whether you agree or disagree, but you come to some
2 resolution as a result of that disagreement.

3 That isn't happening any more. I think
4 what we're finding -- my real concern is news. I find
5 we're getting a lot more entertainment than we are
6 news. The content is awful. For those people who run
7 stations, media outlets, you need to understand we're
8 tired of the garbage, in my opinion, what we're
9 getting served up as news is not news. It is
10 entertainment.

11 Finally, I want to say that the experiment
12 in Richmond was we used to have more than two
13 newspapers. We eventually had two newspapers and
14 those two newspapers were merged. One I found was a
15 little bit more moderate than the surviving entity --

16 MR. KRATTENMAKER: Thank you, Mr. Vuckmer.
17 You can submit your information for the record as
18 well.

19 We're now going to begin to alternate.
20 We'll start with the right and go to the left. Again,
21 two minutes. Yes sir.

22 MR. LABLAU: Yes, Mr. Commissioner,
23 Members of the Commission, my name is Danny Lablau
24 (Phonetic). I'm President of the Virginia State AFL-
25 CIO that represents over 200,000 working families here

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1 in the State of Virginia. These working families
2 depend upon a diverse and free media to participate in
3 our democracy. I'm worried about the concentration of
4 media ownership into fewer and fewer hands. Here, in
5 Richmond, a city of over 200,000 people, the state
6 capital, we have one daily newspaper, The Richmond
7 Times-Dispatch. It's owned by Media General with a
8 circulation of about 200,000 with about 230,000 on
9 Sunday. We have three TV stations, the ABC, CBS and
10 NBC affiliates which produce local news shows four
11 times a day. The Fox affiliate produces a 10 p.m.
12 newscast. There are no locally produced cable news
13 shows. So we have four or five, if you include Fox,
14 as major news sources in Richmond. If you allow any
15 of them to merge, we'd only have three or four.

16 Just look at what happened to radio in
17 Richmond since the 1996 Telecommunications Act dropped
18 its national radioship ownership rule. The four
19 largest radio stations now control 90 percent of the
20 market, according to your study. The number of
21 independent radio station owners in Richmond has
22 dropped 31 percent since 1996.

23 Now I hear that Media General, the owner
24 of the major newspaper is into something called
25 convergence. They want to own a TV station where they

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1 own a newspaper and then share the news operation. I
2 fear they have Richmond on their radar screen.

3 I shudder to think what this would mean.
4 They would dominate the news market and drive up ad
5 prices. Working people have a hard enough time
6 getting fair reporting in this state. If we even have
7 fewer media owners, it would be even harder to get
8 fair coverage from workers' point of view.

9 Politicians would have to pay even more
10 for their ads, print and media or electronic media.

11 MR. KRATTENMAKER: Thank you, sir. I
12 remind you to please state your name for the record as
13 well.

14 Ma'am?

15 MS. SMITH: My name is Laura Smith and I'm
16 from Austin, Texas where I'm a doctoral student at the
17 University of Texas at Austin. I also worked in
18 television news for about 13 years before I went back
19 to school to teach the next generation of
20 broadcasters.

21 I would like to actually reference
22 directly the issue of duopolies and much deference to
23 Mr. Munson in what he's doing at WAVY. This is not
24 the case in many duopoly conditions around the
25 country.

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1 In Jacksonville, Florida when Gannett
2 purchased the Albritton station in 1999 under one of
3 the first television stations allowed to do this, they
4 immediately dismantled the news operation and fired
5 the majority of the news staff, although they kept the
6 entirety of the sales staff.

7 I would like to say they are now
8 simulcasting one news product on two television
9 stations, one an ABC affiliate, the other an NBC
10 affiliate. They are maintaining the entertainment
11 programming, but they have disassembled entirely the
12 news gathering operation and until those sorts of
13 issues are addressed in what can happen both pro and
14 con, I think that's something that the FCC really
15 needs to take into consideration when it's looking at
16 relaxing its duopoly rules.

17 I also want to mention that in the issue
18 of the national cap, there are many companies such as
19 Sinclair and others who are looking at going to
20 regional casting as a result of being able to purchase
21 more television stations around the country. This
22 means they'll inevitably knock off local producers and
23 reporters in order to go to a regional casting issue.

24 This is something that local citizens need to be
25 aware of and that the FCC, I think, should be

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1 responsible for protecting their interests when they
2 get out there.

3 Finally, I'd like to just make a quick
4 statement about the quality of the 12 empirical
5 studies that the FCC is going to base its decision on.
6 I've read all 12 of them and in due deference to the
7 FCC Members who are here who worked on those studies,
8 there is a great deal of missing data in those
9 studies, the theoretical foundations, the social
10 science research there. As a social scientist now and
11 a former journalist, I have great issue with some of
12 the quality controls that were put in place in how
13 this issue is being measured by the FCC. I think we
14 need a great deal more research before you take any
15 further steps and I applaud Commissioner Copps for his
16 willingness to do more public hearings because 12
17 people talking at a hearing like this is not nearly
18 enough.

19 Thank you.

20 (Applause.)

21 MR. KRATTENMAKER: Thank you. This will
22 be the last public comment before we go to the next
23 panel, but I'll ask a member of my staff to come over
24 and get the names so we can start the list again.

25 Yes ma'am.

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1 MS. BALATTA-DALY (Phonetic): My name is
2 Darva Balatta-Daly and I'm a volunteer with the
3 Prometheus Radio Project in Philadelphia, although I
4 drove down from Upstate New York where I live to be
5 part of this. Thank you, Commissioner Copps, for
6 giving me the opportunity to drive 800 miles. I
7 appreciate it. I do.

8 How did the FCC get away for 70 years
9 without having any empirical basis to these rules?

10 (Laughter.)

11 Ownership is power that's well understood.
12 I don't think that we need an economist to tell us
13 that.

14 The public interest, diversity and
15 localism, those issues get thrown around and they
16 expand and contract through this room with each person
17 that talks about them. I have my own version of that
18 and I'd like to share an anecdote with you. I was at
19 a low power FM station a couple of years ago. It was
20 unlicensed because the community wasn't served and
21 there wasn't the possibility of getting a license. So
22 they pitched in and got some equipment, put it up in a
23 house and everybody in that neighborhood listened to
24 it. If the police were out, or if somebody would call
25 out, hey the police are out, everybody would be out on

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1 the street to see what the police were about. I had
2 the opportunity to see this with my own eyes.

3 A viewer called into the station and said
4 I don't know where my daughter is, has anybody seen
5 her? The DJ announced that. A minute later, the
6 phone rang and she's on her way home. That is the
7 kind of diversity and localism that we're talking
8 about.

9 Two hundred forty-seven different
10 ethnicities that Americans identify, that's what the
11 Census says. You've got the census data available.
12 You can use that. Forty-one different language
13 families. Creole is spoken in the United States, not
14 just Spanish and English.

15 We've got a real different idea of what
16 character of community can be and what localism can
17 be. I hope that the FCC will seriously consider the
18 social science aspect of this and look very closely at
19 what the relationship is between a market area which
20 is created by industry data and is used by the
21 industry and what actually communities are. Okay?
22 Because I don't think that there's a correlation, but
23 it's the FCC's job to prove to the public that there
24 is a correlation.

25 The same thing goes for consumers versus

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1 citizens. The FCC, if you believe that consumers and
2 citizens are the same thing, then prove it to us.
3 Show it. Make it transparent.

4 MR. KRATTENMAKER: Thank you very much.

5 (Applause.)

6 MR. KRATTENMAKER: We're going to begin
7 the next panel. Please get ready.

8 (Pause.)

9 As the Chairman explained, we're
10 regretfully trimming you down to four and a half
11 minutes. When the red light comes on, will you please
12 stop and so I shall shut up and give you the time you
13 have remaining.

14 I'm sorry, I'm going to mispronounce, Mr.
15 Blethen.

16 MR. BLETHEN: I'm Frank Blethen. I'm the
17 publisher of The Seattle Times. The Times is a 106-
18 year-old family business. For five generations, my
19 family has passionately pursued a singular obligation,
20 to fulfill our public trust responsibility to serve
21 our communities with independent journalism that's
22 relevant to them.

23 I'm here today because American democracy
24 is in crisis. It is at risk. A democracy needs a
25 free and independent press to survive. In the words

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1 of a great journalist, Walter Lipman speaking about 50
2 years ago, "there is, I believe, a fundamental reason
3 why the American press is strong enough to remain
4 free. That reason is the American newspaper, large
5 and small, and without exception belongs to a town, a
6 city, at the most a region."

7 We are long past our free press because
8 few newspapers and few media outlets any longer belong
9 to a town or a region. The loss is being driven by
10 two troubling trends, one is the egregious ownership
11 concentration and loss of local connection for
12 newspapers, television, radio and cable. The other is
13 the insidious transformation of our large media
14 companies into ownership by Wall Street financial
15 investors. Wall Street has a singular --

16 [END TAPE 3, SIDE B; BEGIN TAPE 4, SIDE
17 A.]

18 -- term earnings and stock price. Not
19 news, not public service and not democracy.

20 The specter of media dominance by a small
21 handful of conglomerates controlled by faceless,
22 financial institutions and driven by CEO stock options
23 is enough to scare George Orwell.

24 When I started with my career, there were
25 about 1500 daily newspapers in the United States, most

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1 locally or regionally owned. Today, only 35 years
2 later, there are only about 280 independent daily
3 newspapers left and very, very few serving
4 metropolitan areas.

5 In the old days, long tenured publishers
6 and editors had deep connections with the cities and
7 regions they served. Today, few publishers, editors
8 or station managers even come from the communities
9 they work in. Few of them stay very long. Few
10 publishers have news backgrounds or even news
11 sensibilities.

12 America's news rooms have quietly been
13 transformed from democracy's watchdog into corporate
14 lapdogs. One only needs to ask why FCC pleadings to
15 relax radio and TV concentration rules and to repeal
16 the cross ownership trend have been outside the bright
17 light of press scrutiny. When huge corporations
18 lobbying for their own financial self-interest also
19 control most of our news rooms, does anybody wonder
20 why there is such a chill?

21 I've heard the arguments of proponents of
22 cross ownership repealed. I've noted that they are
23 made only by large companies driven by the quest to
24 grow ever larger. The most frequent argument is that
25 the internet and cable have created information and

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1 access proliferation. That is not accurate. There
2 are still limited sources of professional, credible
3 news and opinion. Indeed, the public company quest
4 for ever higher profits have put incredible pressure
5 on our remaining few news rooms. Most journalists
6 believe there has been a serious disinvestment in news
7 and a dumbing down of media, in general.

8 The correct issue is whether we still have
9 and can maintain well-staffed, professional news rooms
10 that can keep Americans informed about their community
11 and about their country. Getting the same often
12 shallow information delivered a thousand different
13 ways does not provide a substitute for robust,
14 independent, news generation.

15 This argument also ignores that single
16 corporate entities are now using their various
17 platforms and extensive control to simply recycle
18 information and programming and to promote their own
19 products often in the guise of news.

20 I urge the Commission to return to your
21 most basic obligation, to ensure we preserve and
22 nurture our democracy. Your obligation is bigger than
23 cross ownership or the other concentration rules, but
24 that's what's in front of us. Repeal of cross
25 ownership and relaxing of the other rules would be a

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1 giant crack in the foundation of our democracy. We
2 have seen the unintended consequences of the 1996
3 Telecommunications Act. We're beginning to see the
4 negative consequences of the Commission's relaxing of
5 other radio and TV concentrations --

6 MR. KRATTENMAKER: Thank you, Mr. Blethen.
7 Your time is up.

8 Mr. Herwitz?

9 MR. HERWITZ: Good afternoon. My name is
10 Tom Herwitz. I'm President of Station Operations for
11 Fox Television Stations. Given our record in local
12 news and service, we at Fox are frankly confounded by
13 the argument that allowing us to own stations that
14 reach more than 35 percent of the country will
15 threaten competition, diversity and localism. I hope
16 I'll show today that the opposite is true.

17 Today, at our stations, 35 stations across
18 the country, we produce and air more than 800 hours of
19 original, regularly scheduled local news per week,
20 more than anybody else in the country.

21 I joined Fox from the FCC actually in 1986
22 when our first six stations were bought. Those
23 stations did 23.5 hours of news and three of them in
24 Dallas and Chicago and Houston aired no news at all.
25 Today, those same stations produce every week 195

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1 hours of local news, an eight-fold increase. And on
2 the station in Dallas, for example, we broadcast 43
3 hours per week.

4 In many markets, we've produced and aired
5 more local news by 9 a.m. than our competitors will
6 air all day long. What empirical justification is
7 there to keep Fox from bringing this kind of
8 commitment to additional communities?

9 We also provide local news service that is
10 unique to many communities, often in dayparts where
11 there is no other local news and prime time and in the
12 morning. We're baffled that some broadcasts say
13 they're more local, more dedicated to serving their
14 local communities than Fox because their group doesn't
15 reach 35 percent. The facts completely belie this.
16 Deb McDermott who is down to my left is a wonderful
17 broadcaster, but her Richmond station here is not more
18 local than ours. When I call her, I call her in
19 Nashville and I call Vince Young in New York City.
20 Our local managers, as theirs, have editorial autonomy
21 which we believe benefits the stations as well as the
22 viewers.

23 Secondly, we emphatically dispute that our
24 stations have less than the highest commitment to
25 serving their local communities. Take our station in

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1 Detroit, WJBK, which I use because one of our
2 principal competitors there, WDIV, is owned by Post
3 Newsweek station, an outspoken advocate of keeping the
4 35 percent cap, arguing that companies whose stations
5 don't reach the cap are better local operators. But
6 we have 50 percent more news than WDIV. Our station
7 has been chosen Broadcasters Association station of
8 the year four years in a row. Our problem solving
9 news takes on local Detroit issues every day. We shut
10 down prostitution rings near schools. We got the
11 school district to recognize that they were operating
12 abandoned buildings that were drug and prostitution
13 and rat-infested by schools. We brought to the
14 attention of the Detroit Water and Sewage Department
15 that had to clean up their operations after we showed
16 workers spending their days drinking, smoking
17 marijuana and dangerously driving large city-owned
18 trucks while intoxicated.

19 WDIV is a strong competitor and whether
20 they're better or worse than us really isn't the
21 point. It seems that if the Commission's task as the
22 Court seems to order is to find empirical evidence to
23 justify preventing Fox from owning additional stations
24 in light of the facts, the hard evidence of our
25 stations' service in communities like Detroit, it's

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1 hard to understand what Post Newsweek or any of the
2 other evidence is or possibly could be.

3 Given this commitment to our local
4 communities, what is the evidence that our ownership
5 harms competition, diversity and localism? Given our
6 track record, how can the government justify a rule
7 that requires us to shut down stations or sell
8 stations in Austin where we do 30 hours; Greensboro,
9 35 hours; Birmingham, 41; we're the news leader there;
10 Kansas City, 48 hours, in order to get below a 35
11 percent cap.

12 MR. KRATTENMAKER: Thank you, Mr. Herwitz.
13 We'll take those last three questions, not as
14 questions, but as statements.

15 Mr. Mays?

16 MR. MAYS: Good afternoon.

17 MR. HERWITZ: I'm sorry, can I just
18 finish. I just want to say that we believe and I
19 think it's shown that what we brought, what Fox has
20 brought through Rupert Murdoch's version through the
21 [Inaudible] deregulation and other things that we have
22 brought to --

23 MR. KRATTENMAKER: Mr. Herwitz, I'm sorry,
24 I believe that we have heard and I believe that in all
25 fairness to the other members of this panel, I should

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1 move along.

2 Mr. Mays?

3 MR. MAYS: Good afternoon, Chairman Powell
4 and Members of the Commission. My name is Mark Mays
5 and I'm the president and chief operating officer of
6 Clear Channel Communications. Thank you for inviting
7 me to testify about the importance of localism in
8 radio broadcasting.

9 Some have spoken of the radio experience
10 as the canary in the coal mine, providing evidence of
11 the dangers of deregulation, dangers, they say, that
12 await other media that would follow in radio's
13 footsteps. But this analogy, although it may be
14 colorful, just doesn't apply for one simple reason.
15 The canary isn't dead. To the contrary, it is alive
16 and well, healthier and more robust than ever before,
17 far from being dead, radio is experiencing a new
18 vitality and is providing excellent service to local
19 communities all over the country.

20 In order to fully appreciate the new
21 vitality of the radio industry, you must remember back
22 to the early 1990s when many stations were simply
23 struggling to survive. It was a different world then,
24 just 10 years ago. Half of all radio stations
25 operated in the red and many others close to it.

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1 Of course, the first thing many of these
2 stations did in those rough financial times was cut
3 their local news budget and even shut down a news
4 department entirely. Local audiences suffered.
5 Though with deregulation and the ability to own more
6 stations, companies like Clear Channel could create
7 economies of scale and benefit from cost savings. And
8 we, like many other broadcasters have reinvested those
9 savings in our stations improving technical
10 facilities, hiring better on-air talent and increasing
11 the quality of local programming.

12 Study after study demonstrates that
13 consolidation has led to increases in the diversity of
14 formats available to listeners and local markets,
15 large and small. Here in Richmond, there were only 16
16 different formats in 1995. In 2002, that number has
17 grown to 25. That's more than a 50 percent increase
18 since deregulation.

19 Now it's true that while there are more
20 formats, there are fewer owners. It's also true that
21 Clear Channel owns 1200 radio stations. However, it's
22 important to put those numbers in context. While
23 Clear Channel owns 1200 stations, that represents just
24 9 percent of all the radio stations in the U.S. Put
25 another way, more than 90 percent of U.S. radio

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1 stations are owned by nearly 4,000 other companies.

2 I'm not here to dispute the fact that
3 we're a large company or that consolidation has
4 occurred, but I will strongly dispute the notion that
5 consolidation has led to a reduction in localism. We
6 succeed by intimately knowing the local community we
7 serve and tailoring our programming to meet their
8 unique needs and tastes. This is true every minute of
9 every hour of every day.

10 If listeners don't like what they hear,
11 they will turn the dial. It's that simple. One tired
12 song, one commercial break that lasts too long or a
13 failure to provide timely news or traffic and the
14 listener is gone. That's why we run Clear Channel in
15 a completely decentralized manner. We operate like an
16 association of small, local businesses. Our local
17 station managers and program directors make every
18 decision about what music gets played on our stations
19 and how often. They develop the play list based on
20 extensive local audience research, listener requests
21 and first hand knowledge of their own communities.
22 At Clear Channel, there is no such thing as a
23 standardized play list.

24 To those who would say that radio has
25 become more homogenized since deregulation, let me

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1 dispel that myth as well. Since 1999, the number of
2 unique songs and artists we play has increased by 30
3 percent, reflecting the fact that Clear Channel radio
4 stations are actually playing a greater variety of
5 music every year. I'm pleased to say that our
6 dedication to localism has been recognized time and
7 time again. Last year, our Richmond stations won
8 awards ranging from best locally produced radio show,
9 to best traffic reports, to best local broadcaster of
10 the year. And our local managers take great pains to
11 introduce listeners to new artists. Here in Richmond,
12 for example, WRXL, there's a one hour program each
13 Sunday night featuring local and regional bands. Up
14 the road in Washington, D.C., DC-101 New Music Mart
15 every Sunday night.

16 In fact Carbonleaf, an unsigned band from
17 right here in Richmond, has seen its music move from
18 the Sunday night show to DC-101 power rotation. But
19 we don't just serve our communities by playing the
20 music our listeners want to hear. Clear Channel
21 stations around the country are deeply involved in a
22 wide variety of local, civic and charitable events.

23 The bottom line is that good radio is
24 local radio.

25 MR. KRATTENMAKER: Thank you, Mr. Mays.

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1 Ms. McDermott?

2 MS. McDERMOTT: Thank you for conducting
3 today's hearing in Richmond and for allowing me to
4 appear. I'm executive vice president of Young
5 Broadcasting, Inc. which owns and operates 11
6 television stations in various markets, including
7 WRIC-TV, an ABC affiliate in Richmond.

8 I respectfully urge the Commission not to
9 modify or repeal the 35 percent national television
10 ownership cap. The 35 percent cap is essential to
11 localism, the bedrock principle on which the
12 congressionally mandated broadcast system is based.
13 The principle of localism is uniquely American. It
14 has its roots in our federalist system of government.
15 As Virginia's favorite son, Thomas Jefferson warned
16 his friend, Gideon Granger in 1800, our country is too
17 large to have all of its affairs directed by a single
18 government. Public servants at such a distance and
19 from under the eye of their constituents must, from
20 the circumstance of distance, be unable to administer
21 and overlook all the details necessary for the good
22 government of the citizens.

23 For the very same reason, Congress
24 rejected the notion of a highly centralized system of
25 terrestrial broadcasting. Unlike the governments of

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1 Europe, Congress opted for a system that would assure
2 to the fullest extent possible that America's
3 television stations would be responsive to the special
4 needs and interests of the local communities they are
5 licensed to serve. As it is self-evident today, as
6 when Congress created the current system of
7 broadcasting, that it is not in the national interest
8 to have all the nation's television broadcast
9 programming dictated each day, every day, seven days a
10 week, 52 weeks a year and year after year by a handful
11 of station owners.

12 Some of you have asked, how would viewers
13 know the difference if the cap were raised? Viewers
14 will know because network owned stations must serve
15 their parent network national and international
16 program distribution interests and the interests of
17 their station's local viewers. Those interests are
18 often in conflict. A non-network owned station in
19 contrast has but a single responsibility to only serve
20 the interests of its local viewers. The interests of
21 local viewers is the essence of localism.

22 Localism has meant that the citizens of
23 Springfield, Missouri were spared an episode of NBC's
24 Fear Factor when the local station determined the
25 program would be offensive to local viewers. No NBC

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1 station rejected, to my knowledge, a single episode of
2 that show.

3 Localism has meant that viewers in North
4 Dakota, Virginia, South Dakota, South Carolina and
5 other states have been able to watch Billy Graham on
6 their local stations. That, of course, would not have
7 occurred if these stations had been owned by a
8 network. Localism has meant a Fox affiliate in
9 Raleigh, North Carolina was able to reject Fox's
10 "Temptation Island" because it refused in its words to
11 support a program that could potentially break up the
12 parents of a young child. To my knowledge, none of
13 the Fox owned stations rejected "Temptation Island."

14 Localism has also meant that NBC
15 affiliates collectively were able to persuade NBC to
16 allow them to carry a presidential debate rather than
17 a major league baseball playoff game scheduled by the
18 NBC network. None of that, of course, would have
19 occurred had NBC owned their affiliate.

20 For 20 years, our company's Louisiana
21 station has aired a live broadcast of the rosary in a
22 very Catholic area, early each morning. When we
23 wanted to expand our local news and move the start
24 time of the rosary program, our network vehemently
25 objected because the rosary program would encroach on

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1 the network's early national news. If our station
2 were owned by the network, the rosary would not be on
3 the air.

4 An increase in the national cap will
5 reduce the number of television stations to which
6 independent program producers can sell programming and
7 in turn will eventually reduce the already small
8 number of independent program companies. This is, of
9 course, of great concern to our company. Right now,
10 70 to 80 percent of our programming comes from the
11 network and with some companies, 100 percent of our
12 syndicated programming is coming from one syndicated
13 company.

14 The balance of power in the program market
15 has already shifted to the networks. If you raise the
16 cap, you will nationalize the nation's local broadcast
17 system. The network argument for increasing or
18 repealing the cap is purely financial. They claim
19 they can no longer compete unless they acquire
20 ownership of their affiliates. It is a tired and
21 hollow argument. The networks have made it for years.
22 If the networks owned television stations in America
23 they would have the same argument.

24 I don't know what Thomas Jefferson would
25 think about the "Fear Factor" if he were alive today,

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1 nor do I know if he would enjoy a Billy Graham
2 Crusade, a presidential debate or a rosary program,
3 but I think he would concur that the local television
4 station in Charlottesville should reflect the core
5 values of the people of Charlottesville and not merely
6 the national and international program interests of a
7 major national television network.

8 Thank you.

9 (Applause.)

10 MR. KRATTENMAKER: Thank you. Mr. Powell?

11 MR. POWELL: Thank you. My name is Chris
12 Powell. I'm the managing editor of the Journal
13 Inquirer in Manchester, Connecticut, the daily
14 newspaper serving 17 towns east and north of Hartford.
15 I'm here to protest Tribune Company's monopolization
16 of the news media in Connecticut and to urge the
17 Commission to enforce the cross ownership rule against
18 Tribune instead of repealing the rule.

19 The Tribune already owned two of the six
20 privately held television broadcast licenses in
21 Connecticut three years ago when it bought the Times
22 Mirror newspaper chain. Acquiring Times Mirror,
23 Tribune became owner of Connecticut's largest daily
24 newspaper, the Hartford Courant, two other Connecticut
25 dailies, the Stamford Advocate and Greenwich Time; the

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1 four weekly newspapers of the Advocate chain in
2 Hartford, Fairfield County and New Haven, Connecticut
3 and Springfield, Massachusetts and the Valu-Mail
4 direct mail advertising company in Hartford. When
5 Tribune acquired Times Mirror, news reporting said
6 that a big part of the corporate plan was to obtain
7 control of TV stations and newspapers and overlapping
8 markets and to coordinate their operations in
9 deliberate violation of the cross ownership rule, but
10 in anticipation of the rule's repeal. That is what
11 has come to pass in Connecticut, where the Courant's
12 and Tribune's two TV stations now promote each other
13 constantly and exchange features.

14 As Tribune now uses its grant of
15 government monopoly on two channels on the public
16 airwaves to give the Courant a big advantage over all
17 the other newspapers in Connecticut, the Courant has
18 made exclusionary contracts with newspaper feature
19 syndicates. That is, the Courant has made its
20 purchase of certain newspaper features conditional on
21 promises by the feature syndicates not to sell those
22 newspaper features to my paper.

23 The worsening concentration of ownership
24 in the news media in Connecticut does not end with
25 Tribune Company. In the last few years, the Journal

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1 Register newspaper chain has obtained not only the
2 daily newspaper in New Haven, but also the weekly
3 newspapers in New Haven suburbs and the Media News
4 Group newspaper chain has obtained not only the daily
5 newspaper in Bridgeport, but also the weekly
6 newspapers in Bridgeport suburbs, that is, in
7 Connecticut the so-called alternative press is now
8 owned by the same big company downtown.

9 Announcing today's hearing the FCC press
10 release of February 7th said "the FCC's goal is to
11 promote competition, diversity and localism in the
12 media." I'd like to know how competition, diversity
13 and localism in the media are promoted by the FCC's
14 giving two of Connecticut's six privately held TV
15 broadcast licenses to an out of state conglomerate
16 that already owns three major newspapers, three weekly
17 newspapers and a direct mail company in the state when
18 as a practical matter no other newspaper company in
19 Connecticut can have even one broadcast license.

20 Some people say the cross ownership rule
21 should be repealed because the internet and cable
22 television are providing plenty of competition in the
23 news media. I don't know where these people live but
24 they can't be living in Connecticut. The state and
25 local news and advertising provided by the internet

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1 and cable TV in Connecticut are negligible. News and
2 advertising in Connecticut are 99 percent matters of
3 TV and radio broadcasters and newspapers.

4 Indeed, if the internet and cable TV were
5 really providing so much competition in the media, the
6 conglomerates would be happy to expand by enterprise
7 that way instead of by acquisition of the existing
8 traditional media properties, existing broadcasters
9 and newspapers. But no, Tribune and other big media
10 companies are expanding through cross ownership of
11 existing properties because the big media companies
12 consider cross ownership to be their best opportunity
13 for growth and gaining control of a market.

14 The awarding of broadcast licenses --
15 government grants of monopoly on the public airwaves -
16 -can be conducted in only two ways, to diversify
17 ownership of the media or to concentrate ownership.
18 The cross ownership rule has been a small, but clear
19 affirmation that diversification is better than
20 concentration. On a national basis, it has been a
21 guarantee of a little diversification, though only a
22 tiny fraction of the diversification we could have.

23 I have never understood why we let anybody
24 have more than one broadcast license in this country.

25 Repeal the cross ownership rule and we are

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1 sure to get a lot of the concentration that it was
2 meant to prevent. That is precisely why the FCC is
3 being asked to repeal the rule. Repeal the cross
4 ownership rule and by government decree and patronage,
5 Connecticut will be awarded the Tribune Company.
6 We're a small state, but we deserve better public
7 policy than that.

8 Thank you.

9 (Applause.)

10 MR. KRATTENMAKER: Thank you. Mr. Sturm?

11 MR. STURM: Good afternoon. I'm John
12 Sturm, president and CEO of the Newspaper Association
13 of America. I'm grateful for the opportunity to
14 appear before you this morning, this afternoon,
15 because in the 28 years since the newspaper broadcast
16 cross ownership rule went into effect, my association
17 has never had an opportunity before to bring our view
18 of this issue in front of the Commission.

19 I will take the next few minutes to
20 demonstrate the important role that newspaper
21 broadcast cross ownership can play in enhancing the
22 quality and the quantity of news and other local
23 content available to the public. Once upon a time,
24 long ago, the FCC affirmatively encouraged the
25 participation of newspaper publishers in the broadcast

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1 industry. Even in its 1975 order adopting the ban,
2 the FCC expressly recognized the traditions of service
3 that newspaper publishers brought to the broadcasting
4 industry. These facts have not changed.

5 The Commission also found in 1975 that
6 there was no evidence that commonly owned newspaper
7 and broadcast stations posed any threat of any
8 competitive behavior and that, on average, stations
9 co-owned with local, daily newspapers, provided more
10 news and nonentertainment programming than other TV
11 stations. Happily, these facts too have not changed.

12 It makes perfect sense that newspaper
13 owned broadcast stations would excel in news coverage
14 and informational programming given their extensive
15 news gathering resources and their strong ties with
16 the community. Indeed, daily newspapers are by their
17 very nature more deeply involved in and aware of the
18 activities, concerns, and issues affecting their local
19 communities.

20 The best evidence of the impact of cross
21 ownership can be found in another set of facts, the
22 records of the 40 grandfathered newspaper broadcast
23 accommodations that exist today, representing the full
24 gamut of market sizes from Mile City, Montana to
25 Chicago, Illinois. These co-owned facilities

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consistently have provided their home communities with unmatched levels of service. By way of example, in the Cedar Rapids, Iowa market, KCRG-TV, KCRG-AM, which are jointly owned by the Cedar Rapids Gazette, offer more news than any other stations in their markets. The stations make use of a wide array of newspaper resources, including an ombudsman employed by the Gazette to review the fairness and accuracy of the news reports offered by both the TV station and the newspaper.

Similarly, WEOL-AM, co-owned with the Chronicle Telegram in Lorraine, Ohio, provides an impressive 24 hour news service with the local news every hour on the hour as well as news summaries every half hour during the morning and afternoon drive.

And finally, in the much smaller Sioux City, Nebraska market, WJAG, Inc., owns both the Norfolk Daily News and WJAG-AM. As a result of this cross ownership, WJAG has built a solid reputation for its news reporting, operations, earning it more than 35 awards in the past several years.

These and the numerous other firsthand experiences in other markets have been filed in the Commission's record by NAA and many other parties such as Gannett in Phoenix, Media General in Tampa, Belo

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(Phonetic) in Dallas and Tribune in Chicago, Los Angeles and other markets.

These results are confirmed by the FCC's sponsored studies that have been conducted on newspaper broadcast cross ownership. Indeed, while there have been some criticisms of some of these studies, the evidence that broadcast stations jointly owned with daily newspapers provide your communities with both more and higher quality news and informational programming has not been seriously questioned.

Specifically, the Spavins Study found that affiliates co-owned with newspapers experience noticeably greater success under our measures of quality and quantity of local news programming than other network affiliates.

Ladies and gentlemen, the Commission's record establishes this set of facts that must guide your decision on this matter. The media world is totally different now as compared to when this ban went into effect in 1975; no one can seriously suggest otherwise. Second, the experiences in the 40 grandfathered markets over 28 years have demonstrated a complete absence of harm. And third, the Commission's record and your own studies, reveal an

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1 abundance of superior service by newspaper-owned local
2 stations. The ban is long outdated, has no current
3 basis and should be immediately repealed in full. The
4 only thing proven that this ban has done is deny
5 public interest benefits to the great number of
6 markets in this country.

7 MR. KRATTENMAKER: Thank you, Mr. Sturm.

8 Ms. Toomey?

9 MS. TOOMEY: Good morning. On behalf of
10 the Future of Music Coalition, I want to thank you for
11 the honor of testifying today and I also want to thank
12 the inspiring audience for coming out and letting
13 their voices be heard.

14 My name is Jenny Toomey. I'm a rocker and
15 a businesswoman and an activist and I speak to you
16 today as a working musician and the executive director
17 of the Future of Music Coalition. Most working
18 musicians aren't super stars. Rather, they're
19 independent and local. For the past three years, the
20 Future of Music has worked on issues from webcasting
21 to health care, but one issue unites our entire
22 constituency and that's lack of access to the radio.

23 Given these concerns, last February we
24 began an 8-month research project to examine the
25 problem. In the study we asked the basic questions,

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1 how has ownership of commercial radio changed and does
2 the radio serve the essential regulatory priorities of
3 localism, competition and diversity?

4 Our study finds the following: there is
5 scant evidence that these priorities are improved in
6 any way by the radical restructuring of the industry
7 that has taken place over the past six years. Rather,
8 this restructuring has damaged a precious public
9 resource. Localism has withered. The industry has
10 lost one third of its owners and every local market is
11 controlled by four companies or fewer.

12 Those few independent operators who are
13 less concerned with reaching the most attractive
14 demographics cannot compete in an environment where a
15 handful of media corporations control every local
16 market. And there is scant evidence that radio
17 listeners, radio talent, government, social service
18 agencies and the music community does not benefit from
19 these changes.

20 The fundamental regulatory structures that
21 have governed radio for decades are overturned and the
22 public deserves an accounting of the impact of these
23 changes and a true seat at the table as further
24 changes are debated.

25 The radio industry defends its

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1 consolidated state by pointing at the other industries
2 and saying we're not as bad as those guys, but they
3 aren't those guys. Radio is not private property.
4 Radio is a public resource, regulated by the
5 government on behalf of citizens. The question is not
6 the gross number of owners. The question is how many
7 owners exert control in a local market.

8 When measured according to market
9 concentrations of both listenership and advertising
10 dollars, radio demonstrates the same principles of
11 oligopolistic control now.

12 In virtually every local market of the
13 country, four companies or fewer control over 70
14 percent of the market and in most cases those owners
15 are not local.

16 The broadcast industry claims this
17 reduction in local ownership is not a problem. In
18 fact, they say fewer owners in a market leads to more
19 diversity. They say radio companies will avoid
20 competing with themselves in single format in a single
21 market. Yet, our study found regular and substantial
22 overlap between supposedly distinct formats. In the
23 most extreme case, in the week of August 2, 2002, the
24 national charts for two supposedly distinct formats
25 overlapped at a 76 percent level. In other words, 38

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of the 50 songs on the to play list were the exact same songs.

Furthermore, this argument misses the fundamental logic of the value of the station group. The primary goal of the station group is to (1) attract the largest possible number of listeners and the most attractive demographics and (2) to ensure that if a listener changes a station, they change it to another station owned by the parent company. In other words, the incentive is not to provide a diversity of programming to serve local communities with a range of news, entertainment and information. The economic incentive is to assemble a homogenous landscape of overlapping and economically lucrative audiences that generate the most revenue.

In the February 18th issue of Fortune Magazine, Clear Channel CEO Lowery Mays articulated the importance of revenue generation at his company. He said "we're not in the business of providing news and information. We're not in the business of providing well researched music. We're simply in the business of selling our customers products." This, I would argue is the fundamental problem at the heart of the media deregulation. The stated effort to promote competition, localism and diversity through less

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1 oversight has merely led to an increased emphasis on
2 the bottom line. On the expense side, the incentive
3 for radio companies is to centralize operations,
4 increasing the use of syndicated programming, applying
5 new technologies like voice tracking and cutting
6 costs. In many cases, this syndicated programming is
7 also owned by the radio parent company.

8 These strategies increase profit of the
9 parent company, while diminishing the local connection
10 between the citizen and locally licensed station.

11 Our radio study makes a strong case that
12 concentration has distorted the health and functioning
13 of the radio market, but there are signs of this
14 negative change that go beyond the numbers in our
15 study. At the most recent Future of Music policy
16 summit, Congressman Mark Foley explained that as a
17 result of radio deregulation, the number of local
18 stations that would provide him access to his
19 constituents has diminished from five to one. I
20 suspect the station owners like Mr. Mays who decided
21 that the kind of local news programming that would
22 have previously welcomed the Congressman on to the
23 airways is now not cost effective.

24 If this is happening in Florida, we can
25 bet it's happening all over the country and if this

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1 doesn't raise questions about the damage that
2 increased consolidation could inflict upon our
3 participatory democracy, I don't know what does.

4 (Applause.)

5 MR. KRATTENMAKER: Thank you. I would
6 like to thank the entire panel and two particulars.
7 One, I've noticed that all the Commissioners have said
8 will you please bring us facts and data with which we
9 can assess our rules and I think every single one of
10 ou really listened to that. I think you really need
11 to be commended for it.

12 Secondly, I'm not going to apologize for
13 the weather because I didn't create it, but I do want
14 to say that I'm sorry, I appreciate the way you all
15 condensed your remarks to 90 percent of the already
16 condensed that you intended to bring here and I think
17 you showed great good spirit and good charm about it.
18 Thank you very much.

19 We turn to questions from the
20 Commissioners now. I realized I'd been going in the
21 same direction every time. That's not fair to
22 Commissioner Martin, so I thought I'd start with you,
23 sir.

24 COMMISSIONER MARTIN: In the interest of
25 letting the public go ahead and comment as much as

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1 possible, I'll pass.

2 MR. KRATTENMAKER: Commissioner Abernathy?

3 COMMISSIONER ABERNATHY: I'm going to do
4 the same thing.

5 MR. KRATTENMAKER: Chairman Powell?

6 CHAIRMAN POWELL: I'll pass too. I had
7 one status report though that I wanted to share with
8 Mr. Mays because it was Commissioner Adelstein that
9 sent that canary down into the mine to test the air
10 down there and we just heard back from him this
11 morning and you're right, he's not dead. Actually,
12 what happened when he flew into the mine, he
13 immediately got acquired and he's now programming 12
14 radio stations from the coal mine.

15 (Laughter and applause.)

16 MR. KRATTENMAKER: Commissioner Adelstein?

17 COMMISSIONER ADELSTEIN: I guess Mr. Mays
18 didn't think that the canary image flew. It just
19 didn't fly. I'm going to pass in the interest of time
20 so we can hear from the public.

21 MR. KRATTENMAKER: As much as I would like
22 to turn some questions to the Panel too, I think
23 we'll, if we have time later we'll come back to them.
24 Let's go to the public.

25 People who want to make comments, please

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1 move up to the microphone. Watch the signal here. At
2 the end of one minute you're going to be given a red
3 light and we are going to cut you off, not because we
4 don't like you, but because we want everybody to have
5 a chance to speak.

6 Sir, please state your time.

7 MR. MAZURSKY (Phonetic): Michael
8 Mazursky, second generation of broadcasters. I thank
9 all of the Commissioners for coming to our city today.
10 Welcome. My partner and I put a radio station that
11 was on silent status back on the air. We own four AM
12 radio stations here with the construction permit to
13 build a fifth radio station right now. Of Mr. Mays'
14 comments, of the diversity of formats in Richmond,
15 we're proud to have three of those formats that we
16 serve and we're the only ones that do that in the
17 market.

18 My comment also is on what Mr. Mays was
19 saying about how they helped the local market. They
20 immediately, when they consolidated a few more of
21 their stations, took off an oldies format so we have
22 no oldies station in Richmond. They put on an urban
23 format to compete against Radio One because they
24 needed to do that for their national dollars -- to try
25 to gain some of the national dollars, just is my

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1 opinion.

2 My father was one of the founders of Lotus
3 Communications, a broadcaster since 1962 in Los
4 Angeles. I had the opportunity with my partners to
5 buy a broken radio station here, 990 AM and I just
6 want to tell you since 1997 we put the station back on
7 the air. We have 35 employees. We have grouped
8 together our stations so we do gain some efficiencies,
9 but we have been trying since 1997 to add a night time
10 signal on this station and we did get a construction
11 permit.

12 MR. KRATTENMAKER: Thank you, sir. Your
13 time is up.

14 What we're going to do, as I promised
15 earlier --

16 MR. MAZURSKY: Can I say just one more
17 thing?

18 MR. KRATTENMAKER: I'm sorry, sir --

19 MR. MAZURSKY: That it took from January
20 of 2000, a 5-day window to accept 200 applications
21 from AM guys like me to fix theirs so I can do more
22 local high school sports at night, to May of 2001
23 until I got the construction permit and I'm still just
24 trying to get it on because of all the zoning and land
25 issues, but I just want to tell you that we're working

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1 hard as local guys to serve the community.

2 MR. KRATTENMAKER: Please submit your 15
3 second statement for the record. Thank you.

4 MR. SNOWDEN: We're going to now go to
5 Arthur Mobley who was in line first at the last public
6 comment, if he's in line. Mr. Mobley?

7 You have two minutes, sir.

8 MR. MOBLEY: Yes, I'm going to yield most
9 of my time, but I did want to again reiterate that if
10 the Commission can look at how economically stations
11 make money, they'll find a better answer to some of
12 the dilemma that they're sharing. And I'd love to
13 come back and testify with a bunch of facts that I've
14 compiled also, but I'll yield the rest of my time
15 because I got to comment this morning.

16 MR. KRATTENMAKER: Thank you. Mr.
17 Barrett?

18 MR. BARRETT: I'm Alan Barrett, President
19 of the Richmond Branch of the NAACP and the NAACP
20 wants to issue a brief to statement in strong
21 opposition to mergers and consolidations that would
22 undermine minority opportunities and we also want to
23 appeal to the FCC to not threaten the diversity and
24 democratic ideals that are the philosophic foundations
25 of this country.

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1 FCC's support for these kind of mergers
2 have done damages earlier presenters have stated. The
3 ethnic, social and cultural pluralism will suffer from
4 [Inaudible] broadcasts and print journalism supported
5 by the FCC. More restrictive control of popular
6 culture will not benefit diversity and in fact, they
7 will undermine [Inaudible] culturalism. News events
8 will become commodities that are subject to the whims
9 of corporate ownership. Controversial issues will be
10 diluted or filtered out all together. This means that
11 minority views would have less of a chance of being
12 presented. What happened to Bill Maher and
13 "Politically Incorrect" is but one example. We risk a
14 situation when indoctrination can become the
15 intentional or unintentional product of oligopolistic
16 media markets.

17 MR. KRATTENMAKER: Thank you, Mr. Barrett.

18 (Applause.)

19 MR. KRATTENMAKER: Mr. Richmond?

20 MR. RICHMOND: Yes, good afternoon. My
21 name is John Richmond and the only reason I'm here
22 today is normally I'd be teaching school but we got
23 snowed out so I find myself here and I'll just try to
24 get through as many as five observations as I can.

25 Observation 1. If you all are interested

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1 in finding a larger slice of the public, including a
2 larger slice of people that listen to the various
3 types of media that are out there, hold hearings in
4 the evenings and on weekends. That's when most of us
5 can come out.

6 (Applause.)

7 Number two, I find myself less able to
8 find out what's going on locally than nationally
9 because I see the media already as nationalized.
10 There seems to be a formulaic approach to local news
11 coverage. In the morning and again during the
12 evening, I flip back and forth between the three major
13 stations here. They have virtually the same stories
14 on at virtually the same time and I don't need to know
15 about a rescue in North Dakota or a unique pie
16 throwing contest in Texas and this type of story
17 inevitably takes up at least two minutes of the
18 newscast. And also an extra hour of news doesn't
19 necessarily mean an extra hour of news. Here's why.
20 A lot of times stories get introduced or summarized
21 that are going to be covered in more depth later on.

22 Three. I use radio for most of my media
23 entertainment and in this market it seems like the
24 same songs are playing on every station, several of
25 which are owned by Clear Channel and so a format does

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1 not necessarily mean diversity because as Ms. Toomey
2 said, formats overlap.

3 Observation four. As a principal, I
4 believe that you must resist corporate, NPR and any
5 other pressure to restrict in any way the right of low
6 power broadcasters to set up as long as they don't
7 interfere with other low power broadcasters.

8 I look for views and news from all over my
9 locality, from left, right, up, down, center and the
10 restrictions that need to be loosened are those on the
11 establishment of low power stations such as Prometheus
12 Radio in Philadelphia --

13 (Applause.)

14 MR. KRATTENMAKER: Thank you, Mr.
15 Richmond.

16 Mr. Boone?

17 MR. BOONE: I am Raymond H. Boone, editor
18 and publisher of the Richmond Free Press, the loyal
19 opposition to monopoly journalism, represented by the
20 Richmond Times Dispatch. I'm also a former journalism
21 professor at Howard University and I'm also a former
22 Pulitzer Prize juror on two separate occasions.

23 I stand here to reinforce a lead editorial
24 this morning that was titled "Stop Monopoly in
25 Journalism". I also stand to reinforce my letter to

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1 the Commissioners calling for the end of the abuse of
2 the first amendment which is the cornerstone which is
3 the source or the protector of our democracy. If we
4 do not do that, we are fueling an internal enemy.

5 I think it is appropriate that you meet in
6 Richmond, a city that has suffered much because of the
7 abuse and a newspaper not respecting the first
8 amendment.

9 To give you an idea of the conditions that
10 an independent newspaper like the Free Press faces it
11 is not only the monopoly, but the kind of influence
12 that it has entrenched in the environment. An
13 example, the main library tossed out our three
14 volumes, original volumes, simply because we expressed
15 the view that was not consistent with that of the
16 monopoly publication. Just two or three weeks ago, our
17 photographer was restricted --

18 MR. KRATTENMAKER: Thank you.

19 MR. BOONE: One last sentence, please.
20 Restricted from photographically covering a historical
21 swearing in ceremony of the Chief Justice while the
22 monopoly press was allowed to do that.

23 MR. KRATTENMAKER: Thank you, sir.

24 MR. SNOWDEN: We're going to go for
25 another 15 minutes.

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1 Sir.

2 MR. BENNETT: My name is Hans Bennett.
3 I'm an independent photojournalist and editor of
4 Insubordination Magazine from Philadelphia. I'd like
5 to talk about the issue of diversity and in
6 particular, the availability of news that challenges
7 President Bush's current war campaign. In my opinion,
8 the corporate media's reporting on the U.S. wars has
9 never been good, but this current consolidation
10 threatens to make it even worse.

11 Despite the millions around the world that
12 marched on February 15th against the war, Bush has
13 said he will attack without U.N. support, despite the
14 fact that this violates international law, the
15 mainstream media is essentially supporting Bush in his
16 war drive. This very scandaled, illegal war has not
17 been addressed.

18 One of the clearest empirical examples of
19 U.S. military ties to the media machine is the fact
20 that FCC Chair, Michael Powell, is the son of a war
21 criminal, Colin Powell. When Colin Powell presented
22 supposed rock solid proof of Iraq's deception at the
23 U.N. earlier this month, we did not have a critical
24 media to challenge his statements. How many people
25 supporting the U.S. massacre of Iraq know that --

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1 MR. KRATTENMAKER: Thank you, sir, that is
2 two minutes.

3 Yes ma'am.

4 MS. EWELL: Hello, my name is Katie Ewell
5 and I work and live in Richmond and I was lucky enough
6 to catch an article about the hearings. I had no idea
7 that media ownership deregulation might happen. And
8 so I took it upon myself to do a lot of research after
9 I read the article and in a lot of my research I found
10 a lot of the opposing views. I guess I'm a consumer
11 activist or a citizen activist now. I don't know what
12 you would call it, but I am not for the deregulation.

13 I see a lot of -- I don't like to have
14 everything coming from one or two corporations. And
15 I'd just like to say I wish that more people were
16 here.

17 I wrote a letter to the editor of the
18 Times Dispatch and unfortunately it wasn't printed and
19 it's unfair to assume that that's because Media
20 General might have opposing views, but it's easy to
21 assume that that's why it was not printed.

22 And the biggest thing is, Chairman Powell,
23 I know that you wanted us to bring evidence and I'm
24 just an individual and I want to ask what can we do as
25 individuals or concerned citizens to help you guys

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1 fight the courts, to gather the evidence that you need
2 to support our views?

3 I could do a telephone survey or you know,
4 would you like me to document all my media intake for
5 a month. What can the public do to help you guys
6 because apparently you don't have enough time to get
7 all the studies done together. I'm just trying to ask
8 for help so that we can help you guys.

9 Thank you very much.

10 MR. KRATTENMAKER: Thank you. Yes sir.

11 MR. PARISH: My name is James Parish and
12 I'm co-founder of the Richmond Image Moving Co-op
13 which is a nonprofit here in Richmond that promotes
14 and supports independent media makers.

15 I took the day off work so I could be
16 here. I had planned to be here a couple of hours, but
17 was so encouraged by the public support that I had to
18 call in and say I needed to be somewhere else today.
19 And I'm glad that I have the flexibility to do that in
20 my job and not everybody does.

21 And I would encourage you to hold some of
22 these hearings in the evenings and on the weekends.
23 I'm guessing if you're listening to my voice, you may
24 have some idea where I am from at least that I grew up
25 in the South. I grew up in a little town, Benson,

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1 North Carolina. And when I'm in the South and when
2 I'm in North Carolina, I like to turn on the radio and
3 the TV and hear people that sound like me and when I'm
4 in New York, I want to hear people who sound like they
5 are from New York.

6 So I am for the local and last night I was
7 in a club showing a bunch of films through my
8 nonprofit to focus, showcase independent film makers,
9 media makers here in Richmond. And to highlight this
10 event so media makers would know to be here and we're
11 doing that because it's hard to have a voice and to
12 show our work elsewhere, so we gather in clubs with
13 100 to 200 people at a time. But we can do that and I
14 encourage you to think about the local in this issue.
15 It's important. Thank you.

16 MR. KRATTENMAKER: Thank you. Yes sir.

17 (Applause.)

18 MR. MAZZA (Phonetic): Hi, my name is
19 Anthony Mazza. I come from Philadelphia and my
20 comment pertains to -- well, we've been here since
21 about 10 o'clock this morning for approximately six
22 hours of testimony and we've briefly heard from the
23 public 20 minutes before lunch, about 20 minutes a
24 little while ago and now, where we've heard four or
25 five hours of testimony from experts and the panelists

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1 and I'm just wondering if this is all we have to offer
2 as far as inviting the public into this process, then
3 I just think that it's really deficient.

4 The other comment that I wanted to make
5 was that I thought it was curious that we heard some
6 testimony from people from NBC and from Fox and from
7 Clear Channel about how consolidation promotes
8 diversity and protects localism and we've heard some
9 very heartfelt stories from Detroit and some other
10 areas. But I'm just curious where the representatives
11 of these communities are that are the cheerleaders of
12 this corporate protection that there are communities
13 and representation that they're getting in these
14 corporate forums because even groups like the tobacco
15 industry can trot out their corporate-funded grass
16 roots groups to talk about the evils of smoking laws
17 and anti-smoking laws, but we haven't heard from one
18 citizen who wasn't on the payroll of these companies
19 come in and testify that media consolidation has done
20 great things for my local area.

21 (Applause.)

22 And I'm just wondering, I just hope that,
23 I really hope that we have another opportunity,
24 another public forum to hear the full range of
25 opinions because I'm sure that they exist, but I just

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1 don't feel that we've been given the opportunity to
2 hear them here today.

3 (Applause.)

4 MR. KRATTENMAKER: Yes sir.

5 MR. COLLIER: My name is Chris Collier, I
6 live in Plymouth, New Hampshire and I have 20 years'
7 experience in broadcasting. I then became a parent
8 company and I have a subsidiary now. I have a child,
9 he's 22 years old, but he has autism and he's very
10 literal. And when he heard about the angel of public
11 interest I couldn't explain what that was because he
12 wanted to know is that like Gabriel the archangel or
13 what is that? So I began to look into what was going
14 on and I noticed there is a particular fondness for
15 faith-based metaphors. So I'd like --

16 [END OF TAPE 4, SIDE A; BEGIN TAPE 4, SIDE
17 B.]

18 -- if we're to believe that market can be
19 a religion, then we can take that to be the church
20 started by David Zarnoff. David and his well-financed
21 legion of corporate lawyers who are responsible for
22 keeping FM radio out of our hands for decades. David
23 told his followers the following parable: what's good
24 for RCA is good for the USA. That breaks most of the
25 Commandments.

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1 The 1996 Telecommunications Act allowed
2 the money changers back in the temple and today
3 they're here with a vengeance. The angel of public
4 interest hasn't got a prayer of being heard, much less
5 seen. The only place we can eavesdrop is a 50 watt FM
6 station just outside Modesto.

7 Further deregulation is an indulgence
8 followed by a transgression. If there's to be anyone
9 with a flaming sword guarding the American public, let
10 it be the institution, the FCC, that has the power to
11 shape what we see, what we hear and how we think.
12 That's the cannon and creed that will define us, our
13 values and our society.

14 Thank you very much and I appreciate the
15 chance to be here today and to talk to you.

16 Thank you very much.

17 (Applause.)

18 MR. KRATTENMAKER: Thank you, sir. Yes
19 ma'am.

20 MS. RANNELL (Phonetic): Good afternoon.
21 My name is Deborah Rannell and being a former teacher
22 I do know that people can only focus for about 20
23 minutes so I do appreciate you staying with us for the
24 whole day.

25 If I heard correctly, Commissioner Copps,

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1 you said that you were interested in the person who
2 didn't know the FCC existed. Well, I am that clueless
3 person that you were looking for because up until
4 about two weeks ago I didn't know this issue even
5 existed. So I did come here today to learn. And this
6 is what I've learned.

7 Whatever side you all decide to vote on,
8 you have your empirical evidence. I have heard some
9 great speakers today. I think, as I said, whatever
10 you decide to do you will have the empirical evidence
11 to back you up.

12 So then what I'm thinking is that you're
13 going to have to go to your relationships, the people
14 you trust to make your decision. I want to be one of
15 those people that you trust, one of those people that
16 you listen to because I think of you as the steward of
17 my voice.

18 So let me share a fear I have. I am very
19 mainstream and conservative, at least I've been told
20 so, so sometimes that one voice that we hear is real
21 warm and fuzzy for me. I like that. I can go with
22 that. But it scares me to death to think that I won't
23 have all these other voices coming at me because those
24 other voices give me the luxury of deciding if I'm
25 wrong and making a change.

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1 They also give me the pleasure of deciding
2 I'm right and I should stick with what I believe. And
3 I do believe that what you have heard today is that we
4 want you to trust us. We want you to listen to us.
5 You are the steward of our voice. And if we haven't
6 given you a good enough picture of the American
7 citizen --

8 MR. KRATTENMAKER: Thank you, ma'am.

9 MS. RANNELL: Then go get it.

10 (Applause.)

11 MR. KRATTENMAKER: Thank you. Yes sir.

12 MR. BRIDGES: My name is Alex Bridges.
13 I'm a reporter for a small newspaper just south of
14 Richmond and I've been there about four years, got
15 there straight out of college, actually. Went here to
16 VCU and I noticed that while I was at VCU there
17 weren't any places really to work straight out of
18 college that were of the calibre of say the Times
19 Dispatch or any of these other newspapers, so you had
20 to think small and that's how most journalists get
21 their start.

22 But I've noticed that the diversity in the
23 area, across the state, I guess, has dwindled. And
24 I'm not here to argue against corporations owning
25 several newspapers across the country because they can

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1 still do a fine job covering local events, but I think
2 that if you lift this cap, if you allow newspapers and
3 television stations and radio stations to get gobbled
4 up by the large corporations, eventually it's not
5 going to work well and there's been a lot of evidence
6 to show that diversity is dwindling. When you cut
7 away from the diversity, you also start to cut away
8 from the dissemination of information which is
9 generally the main goal of a journalist. And if you
10 cut away from the dissemination of information, you
11 have a less educated public, a less informed public.
12 A less informed public means you have less of a
13 democracy than you had before.

14 In my history lessons, I vaguely recall
15 that the Soviet Union had, I believe, two media
16 outlets for its entire country and that also included
17 the Eastern Bloc and if you want to talk about
18 diversity, obviously that wasn't very diverse,
19 especially since it was controlled by the government.
20 Well, eventually you'll have that same diversity here
21 in America. You'll have Clear Channel and you'll have
22 maybe even Media General owning everything in the
23 country and then you will not have any diversity.

24 Thank you.

25 (Applause.)

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1 MR. KRATTENMAKER: And for our final
2 public comment, yes sir.

3 MR. MILKUS (Phonetic): My name is Chuck
4 Milkus. I'm a former FCC attorney turned broadcaster.
5 You heard from my partner, Mike Mazursky. We're
6 independent AM broadcasters here in Richmond and I
7 want to make sure that the contribution of independent
8 broadcasters to diversity and localism is not
9 overlooked. We're doing a lot of good things here
10 bringing new formats to the market.

11 I urge you that in this rulemaking, if you
12 decide to toughen up and take some action against
13 deregulation in response to some of the things you're
14 hearing, please don't do it in the way that will harm
15 small independent broadcasters who are doing the best
16 we can to try and compete against the large group
17 operators.

18 One additional comment to Mr. Mays, who
19 made a comment about the contribution of Clear Channel
20 to localism. An anecdote that came to mind for me is
21 I have two children, ages 13 and 10. They prefer to
22 listen to FM music stations, not my radio station,
23 unfortunately, but there's a pop station in the market
24 here, Q94. Whenever we go to another city, the first
25 thing they do is we get in the car and they're like

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1 Dad, where's the Q94 in this city? And it usually
2 takes me about anywhere from 10 to 30 seconds to scan
3 the dial and find it and stations just sound the same
4 when they're owned by the group owners, regardless of
5 what city you're in and I don't think that speaks very
6 well for localism.

7 Thank you.

8 (Applause.)

9 MR. KRATTENMAKER: Sir, may I ask you to
10 submit your information for the public record.

11 Thank you very much and you have the
12 floor.

13 MR. BEST: My name is Glen Best and I'm
14 representing the Sierra Club and the reason I'm late
15 is because I actually got tied up in Memphis.

16 MR. KRATTENMAKER: Will you please give us
17 your remarks, sir?

18 MR. BEST: Yes sir, I will. Before the
19 FCC considers any change that would further
20 consolidate media ownership, it needs to investigate
21 instances of censorship by owners such as those
22 recently experienced by the Sierra Club. In the past
23 eight months, the Sierra Club has had two radio
24 campaign ads rejected by stations, a radio ad produced
25 by the club last June urging Bill Ford, CEO of Ford

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1 Motor Company to produce more fuel efficient vehicles
2 was rejected by Detroit stations, but later aired by a
3 station in neighboring Canada. We shouldn't have to
4 go to Windsor to have our ads run.

5 In September, another ad, critical of
6 pollution from large dairy operations in Twin Falls
7 and Jerome, Idaho was pulled by station owners, Clear
8 Channel Communications one week after the station
9 started getting -- was pulled by the station one week
10 after they got a lot of calls in an orchestrated
11 effort by advertisers complaining about the Sierra
12 Club ad.

13 Now this isn't directly related to the
14 FCC, but it involves Clear Channel. In October of
15 last year, Clear Channel Communications and Viacom
16 which own billboards in New Mexico rejected billboard
17 ads by the Sierra Club in support of the Zuni Native
18 American Tribe and critical of plans for an 18,000
19 acre strip coal mine that would harm the Zuni salt
20 lake in western New Mexico.

21 I ask you this question in my closing
22 remarks here, how can the marketplace of ideas which
23 you're so concerned about legitimately operate in an
24 environment where access to public airways is owned by
25 fewer and fewer corporations that view public

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1 discourse as a threat to their bottom line?

2 Thank you.

3 MR. KRATTENMAKER: As the moderator of
4 this session I would like to thank all of the
5 panelists and all the contributors from the public. I
6 thought the woman, the schoolteacher said it best,
7 we've heard a lot of very good talks here today, not
8 only from the panelists, but also from the members of
9 the public.

10 I don't know how many public hearings at
11 the FCC I've participated in, watched or even set up a
12 couple. I don't think any of them were as robust or
13 as informative as this and I think that's all due to
14 the efforts of the Commissioners and of Dane Snowden
15 and his staff. And I wanted to thank you, Dane, very
16 much and give this to you to wrap up.

17 MR. SNOWDEN: Thank you, Tom, and thank
18 you very much for all of your good work in moderating
19 our panel and thank you all for coming today. If you
20 did not have an opportunity to make a public comment
21 and you would like to submit a comment, you can go to
22 the FCC website at fcc.gov and click on the icon that
23 says ECFS Express where you can file your comment for
24 the record.

25 Madam Secretary?

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1 SECRETARY DORTCH: This concludes the
2 Commission's Broadcast Ownership En Banc hearing. The
3 Commission thanks the panelists and the public for its
4 attendance. We are now adjourned.

5 (Whereupon, the public hearing was
6 concluded.)

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